

MONTANA LEGISLATIVE HISTORY

Chapter 360 1989

Bill H 185 S \_\_\_\_\_

Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) 1/27 \_\_\_\_\_ c

2/06 \_\_\_\_\_ c

\_\_\_\_\_ c

\_\_\_\_\_ c

Date Out \_\_\_\_\_ c

S. Committee on Judiciary

Hearing Date(s) 3/15 \_\_\_\_\_ c

3/15 \_\_\_\_\_ c

\_\_\_\_\_ c

\_\_\_\_\_ c

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Did this bill originate in an interim committee? \_\_\_\_ Yes \_\_\_\_ No

Committee \_\_\_\_\_

Report \_\_\_\_\_

# HOUSE FINAL STATUS

2/15 COMMITTEE REPORT--BILL CONCURRED AS AMENDED  
 2/28 2ND READING CONCURRED 49 0  
 3/02 3RD READING CONCURRED 42 3

RETURNED TO HOUSE WITH AMENDMENTS  
 3/04 2ND READING AMENDMENTS CONCURRED 79 0  
 3/06 3RD READING AMENDMENTS CONCURRED 90 2

3/09 SIGNED BY SPEAKER  
 3/09 SIGNED BY PRESIDENT  
 3/09 TRANSMITTED TO GOVERNOR  
 3/13 SIGNED BY GOVERNOR  
 CHAPTER NUMBER 78 EFFECTIVE DATE: 10/01/89

HB 183 INTRODUCED BY ROTH  
 INCREASE TIME FOR COUNTY CLERK TO MAKE ANNUAL COUNTY  
 FINANCIAL STATEMENT

1/14 INTRODUCED  
 1/16 REFERRED TO LOCAL GOVERNMENT  
 1/24 HEARING  
 1/25 COMMITTEE REPORT--BILL PASSED  
 1/28 2ND READING PASSED AS AMENDED 87 7  
 1/31 3RD READING PASSED 89 7

TRANSMITTED TO SENATE  
 2/02 REFERRED TO LOCAL GOVERNMENT  
 2/16 HEARING  
 3/02 COMMITTEE REPORT--BILL CONCURRED AS AMENDED  
 3/03 2ND READING CONCURRED 48 0  
 3/06 3RD READING CONCURRED 49 1

RETURNED TO HOUSE WITH AMENDMENTS  
 3/08 2ND READING AMENDMENTS CONCURRED 88 0  
 3/09 3RD READING AMENDMENTS CONCURRED 87 6

3/14 SIGNED BY SPEAKER  
 3/15 SIGNED BY PRESIDENT  
 3/15 TRANSMITTED TO GOVERNOR  
 3/20 SIGNED BY GOVERNOR  
 CHAPTER NUMBER 177 EFFECTIVE DATE: 7/01/89

HB 184 INTRODUCED BY WHALEN, ET AL.  
 REVISE THE LAWS GOVERNING PATIENT LABOR AT A MENTAL  
 HEALTH FACILITY

1/14 INTRODUCED  
 1/16 REFERRED TO LABOR & EMPLOYMENT RELATIONS  
 1/17 FISCAL NOTE REQUESTED  
 1/23 FISCAL NOTE RECEIVED  
 1/24 HEARING  
 1/25 TABLED IN COMMITTEE  
 1/26 FISCAL NOTE PRINTED

HB 185 INTRODUCED BY WHALEN, ET AL.  
 PROHIBIT DETENTION IN JAIL PENDING MENTAL HEALTH  
 COMMITMENT HEARING

1/14 INTRODUCED  
 1/16 REFERRED TO JUDICIARY

# HOUSE FINAL STATUS

1/17 FISCAL NOTE REQUESTED  
 1/23 FISCAL NOTE RECEIVED  
 1/26 FISCAL NOTE PRINTED  
 1/27 HEARING  
 2/06 COMMITTEE REPORT--BILL PASSED AS AMENDED  
 2/08 2ND READING PASSED 91 3  
 2/10 3RD READING PASSED 95 0

TRANSMITTED TO SENATE  
 2/11 REFERRED TO JUDICIARY  
 3/15 HEARING  
 3/15 COMMITTEE REPORT--BILL CONCURRED 47 0  
 3/17 2ND READING CONCURRED 46 1  
 3/20 3RD READING CONCURRED

RETURNED TO HOUSE  
 3/23 SIGNED BY SPEAKER  
 3/27 SIGNED BY PRESIDENT  
 3/28 TRANSMITTED TO GOVERNOR  
 3/29 SIGNED BY GOVERNOR  
 CHAPTER NUMBER 360 EFFECTIVE DATE: 10/01/89

HB 186 INTRODUCED BY REAM  
 REVISE FISH AND WILDLIFE RESTITUTION LAWS  
 BY REQUEST OF DEPARTMENT OF FISH, WILDLIFE,  
 & PARKS

1/14 INTRODUCED  
 1/16 REFERRED TO FISH & GAME  
 1/19 HEARING  
 2/10 COMMITTEE REPORT--BILL PASSED  
 2/13 2ND READING PASSED 92 4  
 2/15 3RD READING PASSED 93 3

TRANSMITTED TO SENATE  
 2/16 REFERRED TO FISH & GAME  
 2/28 HEARING  
 3/03 COMMITTEE REPORT--BILL CONCURRED 39 6  
 3/04 2ND READING CONCURRED 43 7  
 3/07 3RD READING CONCURRED

RETURNED TO HOUSE  
 3/13 SIGNED BY SPEAKER  
 3/14 SIGNED BY PRESIDENT  
 3/14 TRANSMITTED TO GOVERNOR  
 3/18 SIGNED BY GOVERNOR  
 CHAPTER NUMBER 142 EFFECTIVE DATE: 3/18/89

HB 187 INTRODUCED BY REAM, ET AL.  
 ALLOW SALE OF MAILING LISTS BY DEPARTMENT OF FISH,  
 WILDLIFE, AND PARKS  
 BY REQUEST OF DEPARTMENT OF FISH, WILDLIFE,  
 & PARKS

1/14 INTRODUCED  
 1/16 REFERRED TO FISH & GAME  
 1/17 FISCAL NOTE REQUESTED  
 1/19 HEARING  
 1/23 FISCAL NOTE RECEIVED  
 1/25 COMMITTEE REPORT--BILL NOT PASSED

HOUSE BILL NO. 185

INTRODUCED BY WHALEN, BLAYLOCK, GOULD

IN THE HOUSE

|                   |                                                                 |
|-------------------|-----------------------------------------------------------------|
| JANUARY 14, 1989  | INTRODUCED AND REFERRED TO COMMITTEE<br>ON JUDICIARY.           |
| JANUARY 16, 1989  | FIRST READING.                                                  |
| FEBRUARY 6, 1989  | COMMITTEE RECOMMEND BILL<br>DO PASS AS AMENDED. REPORT ADOPTED. |
| FEBRUARY 7, 1989  | PRINTING REPORT.                                                |
| FEBRUARY 8, 1989  | SECOND READING, DO PASS.                                        |
| FEBRUARY 9, 1989  | ENGROSSING REPORT.                                              |
| FEBRUARY 10, 1989 | THIRD READING, PASSED.<br>AYES, 95; NOES, 0.                    |
|                   | TRANSMITTED TO SENATE.                                          |

IN THE SENATE

|                   |                                                              |
|-------------------|--------------------------------------------------------------|
| FEBRUARY 11, 1989 | INTRODUCED AND REFERRED TO COMMITTEE<br>ON JUDICIARY.        |
|                   | FIRST READING.                                               |
| MARCH 15, 1989    | COMMITTEE RECOMMEND BILL BE<br>CONCURRED IN. REPORT ADOPTED. |
| MARCH 17, 1989    | SECOND READING, CONCURRED IN.                                |
| MARCH 20, 1989    | THIRD READING, CONCURRED IN.<br>AYES, 46; NOES, 1.           |
|                   | RETURNED TO HOUSE.                                           |

IN THE HOUSE

MARCH 21, 1989

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 185  
 2 INTRODUCED BY Whalen 3/24/01  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT RESTRICTING THE  
 5 DETENTION OF A PERSON IN A JAIL OR OTHER CORRECTIONAL  
 6 FACILITY PENDING A MENTAL HEALTH COMMITMENT HEARING;  
 7 REQUIRING PUBLIC MENTAL HEALTH FACILITIES TO IDENTIFY  
 8 APPROPRIATE MENTAL HEALTH PLACEMENTS FOR A PERSON DETAINED  
 9 IN A JAIL OR OTHER CORRECTIONAL FACILITY; REQUIRING RAPID  
 10 TRANSFER TO AN APPROPRIATE PLACEMENT; AND AMENDING SECTIONS  
 11 53-21-120 AND 53-21-124, MCA."

12  
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 **Section 1.** Section 53-21-120, MCA, is amended to read:

15 "53-21-120. (Temporary) Detention to be in least  
 16 restrictive environment -- preference for mental health  
 17 facility -- court relief -- prehearing detention of mentally  
 18 ill person prohibited. (1) A person detained pursuant to  
 19 this part shall be detained in the least restrictive  
 20 environment required to protect the life and physical safety  
 21 of the person detained or members of the public; in this  
 22 respect, prevention of significant injury to property may be  
 23 considered.

24 (2) Whenever possible, a person detained pursuant to  
 25 this part shall be detained in a mental health facility and

1 in the county of residence. If the person detained demands  
 2 a jury trial and trial cannot be held within 7 days, the  
 3 individual may be sent to the state hospital until time of  
 4 trial if arrangements can be made to return him to trial.  
 5 Such trial must be held within 30 days. The county of  
 6 residence shall pay the cost of travel and professional  
 7 services associated with the trial. No person may be  
 8 detained in any hospital or other medical facility which is  
 9 not a mental health facility unless such hospital or  
 10 facility has agreed in writing to admit the person.

11 (3) A Except as provided in 53-21-124, a person may  
 12 not be detained pursuant to this part in a jail or other  
 13 correctional facility only-if-no-mental-health-facility-is  
 14 available-or-if-the-available-mental-health--facilities--are  
 15 inadequate-to-protect-the-person-detained-and-the-public--As  
 16 soon--as--a--mental-health-facility-becomes-available-or-the  
 17 situation-has-changed-sufficiently-that-an-available--mental  
 18 health-facility-is-adequate-for-the-protection-of-the-person  
 19 detained--and--the-public--then-the-detained-person-shall-be  
 20 transferred-from-the-jail-or-correctional--facility--to--the  
 21 mental-health-facility.

22 (4) A person detained prior to involuntary commitment  
 23 may apply to the court for immediate relief with respect to  
 24 the need for detention or the adequacy of the facility being  
 25 utilized to detain.

(5) No detention may be ordered under this part for a person concerning whom a petition has been filed under 53-21-121(1)(b).

(6) No person may be involuntarily committed to a mental health facility or detained for evaluation and treatment because he is an epileptic, mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes him to be seriously mentally ill within the meaning of this part. (Terminates July 1, 1989--sec. 18, Ch. 376, L. 1987.)

53-21-120. (Effective July 1, 1989) Detention to be in least restrictive environment -- preference for mental health facility -- court relief. (1) A person detained pursuant to this part shall be detained in the least restrictive environment required to protect the life and physical safety of the person detained or members of the public; in this respect, prevention of significant injury to property may be considered.

(2) Whenever possible, a person detained pursuant to this part shall be detained in a mental health facility and in the county of residence. If the person detained demands a jury trial and trial cannot be held within 7 days, the individual may be sent to the state hospital until time of trial if arrangements can be made to return him to trial. Such trial must be held within 30 days. The county of

residence shall pay the cost of travel and professional services associated with the trial. No person may be detained in any hospital or other medical facility which is not a mental health facility unless such hospital or facility has agreed in writing to admit the person.

(3) A Except as provided in 53-21-124, a person may not be detained pursuant to this part in a jail or other correctional facility only-if-no-mental-health-facility-is available-or-if-the-available-mental-health--facilities--are inadequate-to-protect-the-person-detained-and-the-public--As soon--as--a--mental-health-facility-becomes-available-or-the situation-has-changed-sufficiently-that-an-available--mental-health-facility-is-adequate-for-the-protection-of-the-person detained--and--the-public,--then-the-detained-person-shall-be transferred-from-the-jail-or-correctional--facility--to--the mental-health-facility.

(4) A person detained prior to involuntary commitment may apply to the court for immediate relief with respect to the need for detention or the adequacy of the facility being utilized to detain."

**Section 2.** Section 53-21-124, MCA, is amended to read:

"53-21-124. Detention of respondent pending hearing or trial. (1) The court may not order detention of respondent pending the hearing unless requested by the county attorney and upon the existence of probable cause for detention.

1 Counsel shall be orally notified immediately. Counsel for  
2 the respondent may then request a detention hearing, which  
3 shall be held forthwith.

4 (2) In the event of detention, the respondent shall be  
5 detained in the least restrictive setting necessary to  
6 assure his presence and assure his safety and the safety of  
7 others as provided in 53-21-120. He A respondent may be  
8 detained in a jail or other correctional facility only if no  
9 appropriate public mental health facility is immediately  
10 available for placement anywhere in the state. When the  
11 respondent is detained in a jail or other correctional  
12 facility, the jail or other facility shall immediately  
13 notify the nearest public mental health facility, as defined  
14 in 53-21-201, that a person detained in the jail or  
15 correctional facility is in need of an appropriate  
16 placement. Upon notification, the public mental health  
17 facility shall identify an appropriate placement for the  
18 respondent, in accordance with the requirements of  
19 53-21-120. Until a placement is identified, the public  
20 mental health facility shall report on the status of the  
21 placement to the jail or correctional facility every 12  
22 hours, including weekends and holidays. When an appropriate  
23 placement has been identified, the court must be promptly  
24 notified and the respondent must be transferred to that  
25 facility within 4 hours.

1 (3) If the respondent is detained, he shall have the  
2 right to be examined additionally by a professional person  
3 of his choice. Unless objection is made by counsel for the  
4 respondent, he shall continue to be evaluated and treated by  
5 the professional person pending the hearing."

-End-



In compliance with a written request, there is hereby submitted a Fiscal Note for HB185, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

"An act restricting the detention of a person in a jail or other correctional facility pending a mental health commitment hearing; requiring public mental health facilities to identify appropriate mental health placements for a person detained in a jail or other correctional facility; requiring rapid transfer to an appropriate placement; and amending Section 53-21-120 and 53-21-124, MCA."

ASSUMPTIONS:

1. Currently, mentally ill people are held in local jails for a few days if hospitals won't admit them due to the patient's behavior or lack of resources.
2. HB185 requires trying to find a mental health facility anywhere in the state to house the person in preference to jail.
3. No additional costs to Montana State Hospital unless an evaluation or assessment on the patient was required. Most of mentally ill people held in jails are admitted to Montana State Hospital.

 1/21/89  
RAY SHACKLEFORD, BUDGET DIRECTOR      DATE  
OFFICE OF BUDGET AND PROGRAM PLANNING

TIMOTHY J. WHALEN, PRIMARY SPONSOR      DATE

Fiscal Note for HB185, as introduced

**HB 185**

MINUTES

MONTANA HOUSE OF REPRESENTATIVES  
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on January 27, 1989,  
at 8:04 a.m.

ROLL CALL

Members Present: All members were present with the  
following exception:

Members Excused: Rep. Mary McDonough

Members Absent: None.

Staff Present: Julie Emge, Secretary  
John MacMaster, Legislative Council

Announcements/Discussion: Rep. Brown distributed a letter  
to the Committee from Gordon Morris expressing his  
disappointment regarding the action taken on HB 98  
(EXHIBIT 1).

HEARING ON HOUSE BILL 201

Presentation and Opening Statement by Sponsor: Rep. Spaeth,  
House District 84 stated that the main reason HB 201 is  
being proposed is to implement the residency  
requirement of judges particularly in cities and small  
towns. This bill eliminates the residency requirement  
of city judges in third class towns, and allows the  
town to enter into an agreement with the county for the  
services of a J.P. or with another city. The way the  
bill is presently written, the town can enter into an  
agreement with the county or another city. The town of  
Boulder has entered directly into an agreement with the  
Justice of the Peace involved, and there is a proposed  
amendment that will allow that action to continue.  
Rep. Spaeth stated that he is in full support of this  
amendment.

List of Testifying Proponents and What Group They Represent:

Alec Hansen, Mont. League of Cities and Towns  
Wally Jewell, Mont. Magistrates Association

List of Testifying Opponents and What Group They Represent:

None.

Testimony:

Alec Hansen, in favor of HB 201 stated that the purpose of this bill is simply to save money. Many of the small towns in Montana cannot afford the expense of having their own judge. By combining with other towns or by using a Justice of the Peace, they will save salaries, training expenses and other costs. Under this law it makes it possible for the small towns of Montana to afford a judge. The proposed amendment (EXHIBIT 2) would simply make it possible for a town or third class city to contract with the judge, rather than going through another city, town, or county. The reason for this amendment is because the town of Boulder has been contracting directly with the judge. If they are not allowed to continue to do that, the judge will not receive the additional money that he is getting from Boulder and will not continue to serve as J.P. for Jefferson County or for Boulder's judge. Mr. Hansen urged the committee to approve the amendment and give considerable thought to the passing of HB 201.

Wally Jewell presented to the committee a written statement (EXHIBIT 3) as well as expressed his approval of the proposed amendments.

Questions From Committee Members: None.

Closing by Sponsor: Rep. Spaeth closed.

DISPOSITION OF HOUSE BILL 201

Motion: None.

Discussion: None.

Amendments and Votes: None.

Recommendation and Vote: No action taken. Close the hearing on HB 201.

HEARING ON HOUSE BILL 185

Presentation and Opening Statement by Sponsor: Rep. Whalen, House District 93 stated that the basic purpose of HB 185 is to change the present practice of individuals being picked up that require mental health care. This

bill will require a mental evaluation and possibly placement in a mental health facility. If there is not a mental health facility immediately available, the person will be prohibited from being placed in a detention facility or jail unless there is no other alternative. It also requires that a telephone call be made every 12 hours to try and find a facility that is available, as well as transporting that person within 4 hours of finding a facility. Rep. Whalen commented that there will be several amendments introduced for this bill, one being on Page 5. Where it is listed as "public mental health facility", it would be better read as "mental health facility" to comply with the language in the title and code sections. In addition, Page 5, Line 25. Change to read "as soon as practical".

List of Testifying Proponents and What Group They Represent:

Tom Posey, National Alliance for the Mentally Ill  
Susan Stefan, Mental Health and Law Project  
Mary Gallagher, Board of Visitors  
Kelly Moore, Executive Director of the Board of Visitors  
John McCrea, Mental Health Facilities  
Sheriff Chuck O'Reilly, Montana Sheriffs and Peace Officers  
Howard Gipe, Flathead County Commissioner  
Winnfred Storh, Mental Health Advisory Council, AMI Parent  
Cliff Murphy, Mental Health Association of Montana  
Lowry Risdahl, Missoula resident  
Lucy Roberts, President of the Alliance for the Mentally Ill in Missoula  
Kathy Roberson, Kalispell resident  
Michael Sherwood, Montana Trial Lawyers Association  
Laura Risdahl, Missoula resident  
David Mosley, President of the Flathead Consumer Council

List of Testifying Opponents and What Group They Represent:

None.

Testimony:

Tom Posey commented that HB 185 is an attempt to address an issue that is both legal and steep in human compassion. Persons falling under this pending legislation are not being held for a criminal act, but have already been declared mentally ill by a professional as provided for in Montana law and should be viewed as needing treatment, not incarceration. Holding someone who may

already be confused and agitated in jails only exasperates the illness and prolongs the time that it will take to alleviate the crisis state if what does in fact exist. Since the development of Montana's Mental Health Code in the early 1970's, one of the guiding principles has been the concept of holding only in the least restrictive environment. A solitary confinement cell can no way be construed to meet that requirement. Holding someone in jail decreases the chance for an attempt at some type of self inflicted injury, and in fact, Mr. Posey is aware that at least 7 people have died in jail during the past year while being held for commitment proceedings. The intent of Montana Law has always been not to use jails as treatment facilities, but to use them only as a possible alternative. This bill only reduces the possibility of that use out of convenience. Mr. Posey presented to the Committee a copy of the Montana Alliance for the Mentally Ill bulletin which, in fact, discusses what is now called the most modern facility in the State, the Rubber Cell in Kalispell (EXHIBIT 4). He feels the article points out quite vividly how the Rubber Cell is certainly not a treatment facility and possibly not even humane under our system of justice.

Susan Stefan, Mary Gallagher, and Kelly Moorse each prepared individual testimonies and submitted them before the Committee (EXHIBITS 5, 6, 7).

John McCrea voiced his support of HB 185 in its entirety and submitted before the Committee a written testimony (Exhibit 8).

Sheriff Chuck O'Reilly stated that those in law enforcement are well aware that they do not have the facilities or training necessary to adequately deal with these types of prisoners. The course of steps that takes place when they get a call of a possible mental health patient is as follows: 1.) The officers respond with full knowledge that this person may very well be harmful to himself or others and precautions are taken. 2.) The person is picked-up and brought to the jail where they are strip searched. 3.) They are then placed in solitary cell to protect themselves as well as other prisoners. Sheriff O'Reilly expressed that the problem with these types of patients is that they need to have care every minute of every day, 24 hours a day. He stated that even though they recognize that local government costs could be increased by having to transport this particular patient an extra one or two hundred miles, he feels it is comparing pennies vs the

total dollar liability they must face if the person becomes injured or injures staff.

Howard Gipe stated that he was in opposition to this bill but hearing the proposed amendments has since changed his mind and supports HB 185 as amended. He stated that one of the problems lies within the mental health facility as they often times are not interested in a patient unless they are paying customers.

Winnfred Storli, speaking as a family member stated that taking a mentally ill person to jail is like taking them to the least therapeutic and most restrictive holding place possible. A jail will not better their condition, only worsen it.

Cliff Murphy, on behalf of the Mental Health Assoc. of Montana as well as the National Mental Health Assoc. voiced his opposition to the housing of mental health patients in jail at any time. As a parent of a son who committed himself voluntarily to a mental health facility, Mr. Murphy personally feels that if his son had been picked-up by the police that he may not be alive today.

Lowry Risdahl, speaking as the father of a mentally ill son reviewed with the Committee the background of his son within the past year. Up until a year ago his son was doing rather well, where then he was picked-up in Butte and confined in jail for writing bad checks. The trial judge ordered that his son leave Butte so he moved to Missoula where there was a repeated incidence. He was once again thrown in jail and once again turned loose. Still, no help was ever offered for this mans problem. Similar occurrences continued to take place and the son was on trial faced with a possibility of having to go to Deer Lodge. Finally, the parents of this man learned of what had been going on and informed the court appointed attorney that he should be admitted to Warm Springs. The judge then dropped the criminal case against their son and filed a civil commitment proceeding and placed their son in Warm Springs. Mr. Risdahl stated that if when his son was first placed in jail, if someone would have recognized that he needed help and taken some action, he probably would not have had to go to the extremes that he did. His son did not belong in jail, he belonged in a facility where he could get some help to prevent this occurrence from happening again.

Kathy Roberson, a resident of Kalispell, Montana and a manic depressant schizo-effective, expressed to the committee

her personal experiences as being mentally ill. Her most recent incidence, she was picked-up by the city police at Glacier View Hospital where she was visiting a friend and they took her to the county jail. She was held there for 6 days where she underwent very painful and traumatic actions. Kathy mentioned that there was one particular jailer that would continually beat her up whenever he was on duty because he did not like her attitude. She was not acting the way that he wanted her to act. He strangled her, he threw her against the walls, and he hit her as well as doing several other things. Kathy stated that she might as well have been raped. She does not think that that is a proper way to treat a person, especially a young lady with a serious mental illness. While Kathy was at Warm Springs and being placed in an isolation unit, she accidentally kicked a nurse who fell on her left side and was injured quite severely. Kathy is now facing charges in Anaconda. The fact is, Kathy did not intentionally hurt this nurse, therefore, mentally ill patients should not be placed in a facility where more pain and suffering can be inflicted upon them by persons who do not understand what mental illness means.

Michael Sherwood stated that in his experience as a plaintiff attorney and as someone who has represented mentally ill people, he expressed how pitiful the treatment towards mentally ill people is within our state. Addressing the issue of money, he stated that it is going to be expensive to pass this bill; however, it is going to be more expensive if it is not passed. The trial lawyers are committed to getting these people out of jail and into a facility where they can get the help that they need and require.

Lucy Roberts, Laura Risdahl and Dave Mosley each gave a brief statement in agreement with the above mentioned proponents.

James Winningham submitted before the Committee a written testimony expressing his support for HB 185 (EXHIBIT 9).

Questions From Committee Members: Rep. Boharski questioned Rep. Whalen as to what the cost of this legislation would amount to. Rep. Whalen responded that a figure would be hard to determine at this point because of the number of people that may be involved.

Rep. Stickney questioned how many mental health facilities does Montana have? Mr. Posey answered that if this bill passed, it would impact each facility that has a

psychiatric unit.

Rep. Eudaily referring to the mental health facility responding to a patient only when they determined it as an emergency wondered if there should be a provision to require the facility to make arrangements for evaluation so the patient can get more immediate attention. Steve Waldron, Executive Director of the Montana Council of Mental Health Centers replied to Rep. Eudaily's question by stating to him that one of the problems they have is that some counties in the state are not part of the community mental health system. If the burden is going to be placed on the county then the county must be responsible for the cost of finding a certified professional person to do the evaluation. If the burden is going to be placed on the facility to do the evaluation in those counties where there are facilities who refuse to participate in the mental health community system is asking a whole lot.

Rep. Aafedt questioned how a law enforcement agency could respond to a mental health facility if they don't even know that the person needs mental health care? Mr. Posey stated that this bill addresses only those people that have been declared mentally ill. In the case of someone being brought in with behavioral problems and the sheriff determining that they needed a diagnosis, the bill would have no effect until a professional declared them mentally ill.

Closing by Sponsor: Rep. Whalen stated that prior to carrying this bill he did not understand many of the issues that were involved with people that have mental health problems. We as a society often times don't understand or act out of misunderstanding against those that do have some type of physical or mental disability. We are finding more and more that there are a host of diseases and as a society we are becoming sensitized to them and reacting in a positive way. Many people don't fully understand the implications of what a mental health disability can be for an individual and acting out of that misunderstanding sometimes we unintentionally mistreat these people. Rep. Whalen urged the Committee to keep in mind the testimony they heard before them and act towards it in a positive way.

#### DISPOSITION OF HOUSE BILL 185

Motion: None.

Discussion: None.



Amendments and Votes: None.

Recommendation and Vote: No action taken. Close the hearing on HB 185.

HEARING ON HOUSE BILL 265

Presentation and Opening Statement by Sponsor: Rep.

Strizich, House District 41 stated that HB 265 is being presented on behalf of the Dept. of Family Services as a housekeeping measure. It is in response to confusion which has arisen partly due to amendments of the youth court act that was introduced by three separate bills during the 1987 Session. Alternatives for disposition of children who come before the youth court are not completely clear. This bill is to clarify the confusion of the amendments that were introduced in 1987. There is no intention of this bill to substantially effect the law itself.

List of Testifying Proponents and What Group They Represent:

Leslie Taylor, Dept. of Family Services  
Mona Jamison, Montana Juvenile Probation Association  
Howard Gipe, Flathead County Commissioner

List of Testifying Opponents and What Group They Represent:

None.

Testimony:

Leslie Taylor, in favor of HB 265 submitted before the Committee a written testimony accompanied by proposed amendments (EXHIBIT 10).

Mona Jamison, speaking on behalf of the Montana Juvenile Probation Association urged support of HB 265.

Howard Gipe asked of the Committee to look favorably upon the proposed legislation as it mainly serves as a housekeeping bill.

Questions From Committee Members: Rep. Boharski questioned page 3, lines 20-21. Regarding the part that has been added "does not obligate the Dept. without the Dept.'s approval". Rep. Boharski stated that it appears that the old subsection C is written as "does not obligate funding from the Dept. without the Dept.'s approval." Ms. Taylor stated that the discrepancy was her error and she would have no objection to returning the words

## DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date JAN. 27, 1989

| NAME                           | PRESENT | ABSENT | EXCUSED |
|--------------------------------|---------|--------|---------|
| REP. KELLY ADDY, VICE-CHAIRMAN | X       |        |         |
| REP. OLE AAFEDT                | X       |        |         |
| REP. WILLIAM BOHARSKI          | X       |        |         |
| REP. VIVIAN BROOKE             | X       |        |         |
| REP. FRITZ DAILY               | X       |        |         |
| REP. PAULA DARKO               | X       |        |         |
| REP. RALPH EUDAILY             | X       |        |         |
| REP. BUDD GOULD                | X       |        |         |
| REP. TOM HANNAH                | X       |        |         |
| REP. ROGER KNAPP               | X       |        |         |
| REP. MARY McDONOUGH            |         |        | X       |
| REP. JOHN MERCER               | X       |        |         |
| REP. LINDA NELSON              | X       |        |         |
| REP. JIM RICE                  | X       |        |         |
| REP. JESSICA STICKNEY          | X       |        |         |
| REP. BILL STRIZICH             | X       |        |         |
| REP. DIANA WYATT               | X       |        |         |
| REP. DAVE BROWN, CHAIRMAN      | X       |        |         |
|                                |         |        |         |
|                                |         |        |         |
|                                |         |        |         |
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|                                |         |        |         |

DATE Jan. 27, 1989

HB 185-Rep. Whalen



# MonAMI

Montana Alliance for the Mentally Ill

Winter 1989

## MENTAL HEALTH SYSTEM RANKED 40TH

Montana was ranked 40th in the quality of care it provides its residents in a newly released report "Care of the Seriously Mentally Ill" published jointly by the Public Citizen Health Research Group and National Alliance for the Mentally Ill. The narrative of Montana's assessment follows here in its entirety.

Montana has shown a willingness to spend money on its public programs for the mentally ill, currently spending \$33.05 per capita which is more than twice as much as neighboring Idaho. Its generosity does not get it much more, however, for a variety of reasons.

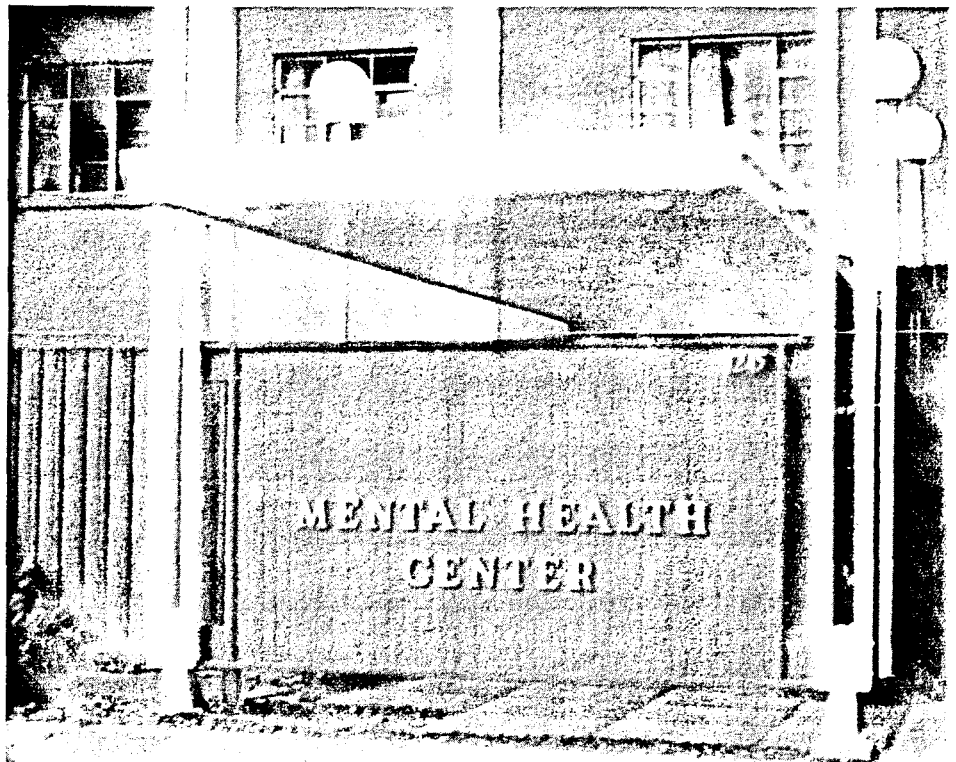
The state hospital in Warm Springs has problems, is neither accredited nor certified, and has been considered for legal action by civil rights groups. A recent salary increase for some hospital staff may make it easier to attract competent professionals. The real problem in the system, however, is the five community mental health centers which have shown little interest in serving the seriously mentally ill. Instead they concentrate their resources on providing counseling services to individuals with far less serious problems. In a state as big and as sparsely populated as Montana, imaginative efforts (e.g. the use of public health nurses) are necessary to follow mentally ill individuals who may live 100 miles from the nearest facility. Services for mentally children are even more deficient than those for adults although there are recent signs of increased interest.

The strongest part of Montana's services for the the mentally ill is the presence of four rehabilitation clubhouses in Helena, Kalispell, Missoula and Great Falls; the last two are said to

be especially good. Beyond these there is very little in vocational or other rehabilitative services available. Housing for the mentally ill consists primarily of a few group homes and other residences connected to the CMHCs; many more facilities are needed.

If Montana hopes to move ahead it will need a vision of where it is going. Currently the Department of Institutions, the Council of Mental Health Centers

and consumers under the Alliance for the Mentally Ill are often at cross purposes and occasionally at each other's throats. It is possible to provide quality services to the seriously mentally ill in a large, sparsely populated area as the Province of Saskatchewan to the north of Montana has clearly demonstrated. A newly created State Mental Health Advisory Council and planning process holds some promise for the future.



# MHLIP

## MENTAL HEALTH LAW PROJECT

EXHIBIT 5  
DATE JAN. 27, 1989  
HB 185-Rep. Whalen

### TESTIMONY OF SUSAN STEFAN

#### ON HOUSE BILL 185

Before the House Committee on the Judiciary

January 27, 1989

Mr. Chairman, Members of the Committee, my name is Susan Stefan. I am a Staff Attorney with the Mental Health Law Project, a non-profit organization which advocates for mentally ill and mentally retarded people across the country. We have been involved on the state and federal level with legislative efforts to benefit mentally disabled people for fifteen years.

The legislation before you today will benefit both mentally ill people who should not be locked in jail cells and sheriffs whose jobs are difficult enough without having to provide safety or protection for mentally ill individuals, let alone the treatment these individuals desperately need when they are in crisis. The bill before you will also save lives, because mentally ill people die in jail cells - they do all over the country, and they have in Montana. Finally, this bill cures a situation in Montana which is very likely unconstitutional.

It is important to emphasize that if a person is displaying symptoms of mental illness, he or she may need a physical exam, may need medication of a certain specific kind, may need to talk to a trained professional. These interventions are particularly crucial at the beginning of an acute episode of psychosis. It is particularly harmful for a mentally ill person to be put into a jail cell, not knowing why they are in jail, receiving no support or caring treatment, and becoming more confused and disoriented and deteriorating until they are far worse off than they were initially. Rapid treatment is very important early if a mentally ill person is in crisis. And the capacity to treat is there - there is a mental health center within two hours of any location in Montana. In many ways, holding a person in a jail cell who is acutely mentally ill is analogous to one of you having a heart attack or a stroke and being taken to jail rather than to the hospital for treatment.

BEST COPY  
AVAILABLE

Testimony of Susan Stefan  
House Bill 185  
Page 2

By expecting Sheriffs to hold mentally ill people in their Jails, you are asking the sheriffs to do something beyond their job description or training. It is tragic for everyone concerned for mentally ill person to go through a crisis with no one able to provide any treatment. Mentally ill people are in so much

pain they may mutilate or even kill themselves. Sherriffs do not have the wherewithal to predict or prevent this. Yet once they have a mentally ill person in their jail, they are legally obligated to provide this care, just as they are to provide medical care to physically ill inmates.

Finally, as I said before, holding mentally ill people in jails is probably unconstitutional. The Eleventh Circuit, which includes Florida, Georgia, and Alabama, held the practice unconstitutional in 1984 in a case called Lynch v. Baxley, 744 F2d 1452 (11th Cir 1984). The Court noted that "temporary confinement in jail is particularly harmful to those who are mentally ill." It found that:

Jail exacerbates the mental problems of the people detained there and thereby lengthens the time it takes to treat them. The individuals who have been held in jail are often angry and harder to treat because they do not understand why they were detained in jail. Jail detention can lead to a greater degree of psychosis where it already exists and can possibly create such psychosis where it does not.

744 F2d at 1458.

In another case in the Second Circuit, in 1986, the Court said that it "had no quarrel" with the reasoning that "jail is for incarceration of criminals and so persons who were only awaiting involuntary commitment proceedings could not be 'punished' by being detained in jails. To so punish persons awaiting involuntary commitment did not bear any relation to the purpose of their confinement." Doe v. Gaughan 808 F.2d 871, 879 (2nd Cir. 1986). I have also been informed recently that this issue is being litigated in Mississippi.

It has been argued that in some places mental health facilities do not exist. In fact, facilities more appropriate than jails do exist for mentally ill people; many hospitals have beds available. If the person is truly violent and out of control, they should be taken at once to the state hospital, since that is where they will likely go in any event. As the court in Lynch v. Baxley held, a person must be detained in "the nearest State, regional, community, county or private hospital or mental health facility which provides quarters for mentally ill patients." 744 F2d at 1462. These options are all more appropriate than a jail cell.

EXHIBIT 5

DATE 1-27-89

HB 185

Testimony of Susan Stefan  
House Bill 185  
Page 3

To summarize, the current practice of keeping mentally ill individuals in jails in Montana is devastating for the individual and his or her relatives; places a burden on Sheriffs which is unfair and unjustified; has led to deaths and may lead to more; and is probably unconstitutional under the United States Constitution. I urge you to correct this tragic situation by reporting this bill favorably.

Thank you.

ment following a consecutive adult sentence, but rather with whether the Parole Commission must follow a judge's recommendation concerning a YCA parole revocation sentence. We are dealing not with a youth offender who is in prison and then sentenced to a consecutive adult term, but with a youth offender on parole who is subsequently sentenced to an adult term. The facts in *Ralston* are thus clearly distinguishable from those in this case.

The *Ralston* Court held that only the sentencing judge, not the Bureau of Prisons, could make the decision whether a youth could receive any further benefit from YCA treatment. *Ralston*, 454 U.S. at 213, 102 S.Ct. at 241. The *Ralston* Court did not, however, hold that a sentencing judge's recommendation concerning a subsequent parole revocation question is binding on the Parole Commission. For the above-stated reasons, we hold that the Parole Commission's decision to revoke King's parole and allow the 1974 YCA sentence to run until expiration in October, 1984, was not violative of the *Ralston* decision.

Under the dictates set forth by the Supreme Court in *Addonizio*, we hold that a parole revocation decision rests with the Parole Commission. A sentencing judge's recommendation or hope concerning a parole revocation question is not binding on the Parole Commission. The Parole Commission, in this case, acted within its discretion when it revoked King's parole and ordered the 1974 YCA sentence to run until expiration in October, 1984. We thus affirm.

**AFFIRMED.**



**Jean P. LYNCH, individually and on behalf of all persons similarly situated, Plaintiff,**

**Jesse M. Hughes, et al., Intervening Plaintiffs-Appellants,**

**v.**

**William J. BAXLEY, etc., et al., Defendants-Appellees.**

**No. 82-7346.**

**United States Court of Appeals,  
Eleventh Circuit.**

**Oct. 26, 1984.**

After remand, 651 F.2d 387, the United States District Court for the Middle District of Alabama, Robert E. Varner, Chief Judge, determined that individual seeking to represent class action to enjoin Alabama state officials from detaining in county jails persons awaiting involuntary civil commitment proceedings had standing. The Court of Appeals, Clark, Circuit Judge, which had retained jurisdiction over action pending determination on standing issue, then held that use of jails for purpose of detaining persons awaiting involuntary civil commitment proceedings violated those persons' substantive and procedural due process rights.

**Reversed and remanded.**

#### **1. Federal Civil Procedure §103**

Any plaintiff attempting to invoke power of a federal court must demonstrate a personal stake in outcome of controversy so as to assure that concrete adverseness which sharpens presentation of issues and thereby enables court to resolve constitutional questions.

#### **2. Federal Civil Procedure §103**

A demonstration of a plaintiff's personal stake in outcome of controversy sufficient to invoke power of a federal court is made by plaintiff's showing that he has sustained or is immediately in danger of sustaining some direct injury and that inju-

DATE JAN. 27, 1989OFFICE OF THE GOVERNOR HB 185-Rep. Whalen  
MENTAL DISABILITIES BOARD OF VISITORS

TED SCHWINDEN, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 444-3955

HELENA, MONTANA 59620

## TESTIMONY ON HOUSE BILL 185

Mr. Chairman, Members of the Committee, my name is Mary Gallagher. I am a staff attorney for the Mental Disabilities Board of Visitors, Legal Services Program at Montana State Hospital.

I am here in support of House Bill 185 because I believe a mental health facility, not a jail is the more therapeutic and appropriate place to detain the seriously mentally ill persons who come through our system.

I am acquainted with patients at Warm Springs who have come to the Hospital after being held in a county jail sometimes for several weeks. If the person was at all psychotic, the isolation and deprivation of being detained in a jail cell for days or weeks, served only to aggravate and intensify their psychotic symptoms. When this happens, it naturally takes much longer for the person to stabilize and return to the community.

Additionally, patients frequently come to our office to find out why they have been punished by being jailed when they have committed no crime. It is difficult to explain to them that jail-in their instance-because they are mentally ill-was not punishment-it was simply what someone was calling the "least restrictive alternative". Jail by any other name is still punishment to them.

I urge you to support this bill.



OFFICE OF THE GOVERNOR  
MENTAL DISABILITIES BOARD OF VISITORS

DATE Jan. 27, 1989

HB. 185-Rep. Whalen



TED SCHWINDEN, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 444 3955

HELENA, MONTANA 59620

## Testimony on House Bill 185

Mr. Chairman, Members of the Committee, For the record, my name is Kelly Moorse. In my twelve years as the Director of the Mental Disabilities Board of Visitors I have had occasion to review patient care and treatment at the state institutions and mental health facilities. In addition, our duties include responding to rights and treatment related issues.

I urge your careful consideration of this bill. Perhaps the best example of why this bill is needed is reflected in two cases. The first is a woman with a serious mental illness in her fifties. She was picked up at her home by two police cars to take her to her involuntary court commitment. She was frightened and embarrassed. She was taken from her home by four police and held in jail, because she refused to cooperate with her involuntary court hearing. She spent a week in jail, with no medication and continue to deteriorate. Without the proper treatment in jail, (medication) her hospitalization at Warm Springs was longer than usual.

The second case involved a man in his eighties. He was held in jail for wandering into someone's home. Since there was no room at the state hospital, he was kept in the jail for more than two weeks. The concern of the jailers (who contacted mental health authorities), was crucial. In addition to the medical attention he was in need of mental health services.

I urge your do pass on this bill.

## MENTAL HEALTH PROTECTION AND ADVOCACY PROGRAM

1410 8th Avenue  
Helena, Montana 59601

(406) 444-3889  
1-800-245-4743

EXHIBIT 8  
DATE Jan. 27, 1989  
HB 185-Rep. Whalen

January 27, 1989

Testimony of John McCrea  
House Judiciary Committee  
Re: House Bill 185

Mr. Chairman, and members of the Committee, my name is John McCrea. I represent the Mental Health Protection and Advocacy Program for the Mentally Ill. For the record, I support the intent and purpose of House Bill 185 in its entirety. My position provides me the opportunity to have observed first hand the inappropriate, demeaning and frightful experience of someone whose mental disorder was described, when apprehended by the police, as resulting from intoxication. In fact, this person, a woman in her 30's, suffers from Huntington's chorea. This person spent eight days confined to a jail cell. To further illustrate my concern regarding the current law, this person graduated with honors from a University, holds a Ph.D. with honors in clinical psychology, and worked at a medical facility until she was diagnosed with Huntington's chorea. Due to the progressive stages of her disability, she has experienced confinement in jail, and commitment proceedings for her protection and safety. If you understand Huntington's chorea, or understand a person with diabetes, or understand someone who experiences grand mal seizures, then I would hope that we may understand the significance of House Bill 185.

EXHIBIT 8

DATE 1-27-89

HB 185

Testimony of John McCrea - HB 185

HB 185 is long overdue in serving its primary purpose and intent. There is current discussion and opposition by some county officials to HB 185 because of the cost involved in detaining a person in a mental health facility instead of jail. I would ask these individuals to place themselves in the position of a person who is not only challenged by a mental disorder or mental illness, but is detained in jail, not because of a criminal offense, but because of a disability misunderstood and because competent caring professionals are impeded by our current laws and by those who lack awareness and understanding. Please consider the impact of this bill before you, and the possible ramifications that continue for those individuals who are unable to represent or protect themselves because of disabilities that are often misunderstood and misinterpreted.

Thank you Mr. Chairman and members of the committee.

DATE Jan. 27, 1989

JAMES POWELL WINNINGHAM JR  
39 O'BRIEN AVENUE  
WHITEFISH, MT 59937

HB 185-Rep. Whalen

Good Morning, Members of the Committee.

I am deeply grateful to you for the opportunity to speak in favor of HB 185.

As I am unable to attend this hearing due to the unusual time constraints of my job, I would like my comments to be made by audio tape. I have provided copies of the text for the members.

My name is James Powell Winningham, Jr.. I am a Manic Depressive, which means I possess a genetically inherited behavioral disorder. I follow a permanent dosage regimen of Lithium, and I am completely stabilized. I'm a native of Arizona which, as you may know, is dead last in the nation in per-capita funding for mental health. My wife and I have recently relocated to Whitefish. While attempting to find some help for a new friend, I discovered the Flathead Alliance for the Mentally Ill, and the Consumer's Council. I have recently joined the Council, and I've been elected Council Awareness Leader, and one of my duties is to act as a public speaking advocate for the Council in changing the perceptions of the public with regard to Mental Health. It is in that capacity that I address you today, as well as a past recipient of the kind of treatment this bill seeks to eradicate.

My first-hand experience with the incarceration vs. hospitalization question happened in 1976. I was having my first serious manic breakdown at the time, and I sat down in someone else's car. Sat down in it. In Arizona, that's attempted Grand Theft Auto. The compassionate car owner and the prosecutor pressed charges all the way to the trial.

After my arrest, the trip downtown to the county tank was interrupted by a visit with the FBI, who needed to talk to me about a bomb threat phoned in to the technical school at which I was arrested. I was the convenient crazy that day, I guess. And no, I didn't make any bomb threats.

After the chat with the FBI, I was processed into the county jail and put into a cell about eight feet square with a murderer, a robber, and a rapist. My size is the only thing that kept them away from me, I think. That, and the constant stream of irrational gibberish coming out of my mouth.

Soon I came to the attention of the medical people on the cellblock. They did not transfer me to the hospital. They just put me in a cell by myself. Mind you, all this time I had at my disposal items which I could use to kill myself and others around me had I been so inclined. And I was very, very insane.

The fellows on the other side of the wall in the cell next to my new one apparently didn't like my attitude, and as I reached my hand out to take the offered cigarette, it was smashed by a long, hard, sticklike device invented to turn the channels on the TV from inside the cell. The effects linger still today. The next thing I knew, flaming newspapers were being heaved around the wall into my cell over and over again. The guards were nowhere to be found until I filled my rubber-covered mattress with water from the shower. I then got a new cell without a mattress or a shower.

Another full day passed, and once in a while a nurse would try to feed me some Thorazine. At that point a bucketful wouldn't have worked.

So after almost four days of this, I was just as manic as the day I was arrested, and I was finally transferred to the Maricopa County Hospital Jail Ward, where I was introduced to leather restraints. I had become so sick that I tried to either eat or destroy my bedding and clothing, so I spent the next ten days tied naked to a metal bedframe lying in my own waste, and freezing at night when the refrigeration dropped the temperature to the mid-fifties. They finally tried Lithium, and within 72 hours I was beginning to recover. Now comes the good news and bad news bit. You're not very crazy any more, but you're still under arrest. I was returned to the County Jail. I was put in a cell with eight other criminals who watched as I was given the wrong medications in the wrong dosage at the wrong time by indifferent guards. For instance, I was ordered to take ten Thorazine at one time, and luckily for me I was able to drop most of them on the mattresses covering the floor of the cell on the way over to the sink. My junkie bunkies became fast friends after that. My father finally bailed me out because he could see I was in danger of slipping back into the dark mists of mania. Six weeks later I went back to work. The restraints had crushed the nerves in my left wrist, temporarily ending my career as a guitar player, so I had to learn a new trade. Six months later I was found not guilty by reason of insanity. Three days after that I had to tell my new boss that I had to check into the County Psych ward for three days to prove I was no longer a danger to myself or others. How would you have done it?

My point is: If a competent psychiatric diagnosis could have been made prior to the incarceration, it would have been patently obvious that I was not criminally inclined, and the real danger to myself and others was after I was jailed, and not before. I know that the process of erasing the stigma of mental illness is as hard for us to do as it is for you to understand, but I heartily applaud the effort evidenced by HB 185 as a sign that this long sad night of ignorance and discrimination might one day end, and I totally support it's passage. Thank you.

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on February 6, 1989, at  
9:09 a.m.

#### ROLL CALL

Members Present: All members were present

Members Excused: None.

Members Absent: None.

Staff Present: Julie Emge, Secretary  
John MacMaster, Legislative Council

Announcements/Discussion: A letter was drafted by John MacMaster  
to Chief Justice Turnage on behalf of Chairman Brown  
(EXHIBIT 1).

#### HEARING ON HOUSE BILL 313

#### Presentation and Opening Statement by Sponsor:

Rep. Grady, House District 47, Sponsor of HB 313 requested  
by the Montana Ski Area Association. This bill was proposed  
after the Montana Supreme Court declared unconstitutional a  
state law that held skiers responsible for injuries while  
skiing. Rep. Grady introduced Pat Melby, a Helena attorney  
who took part in the drafting of the bill to explain in  
detail the intent of HB 313.

#### Testifying Proponents and Who They Represent:

Pat Melby, Montana Ski Area Association  
George Willett, Showdown Ski Area  
Norm Kurtz, Big Mountain Ski Resort  
Bill Grasser, Lost Trail Ski Area  
Terry Abelin, Bridger Bowl Ski Area  
Peter Pitcher, Discovery Ski Area  
Brad Morris, Snowbowl Ski Area  
Kevin Taylor, Great Divide Ski Area  
Red Kamp, Maverick Mountain Ski Area  
Michael Bell, President, Montana Ski Association  
Dr. Bud Little, Self and skiers  
Stanley E. King, National Ski Patrol Association

Closing by Sponsor: Rep. Grady stated that speaking from a skier's point of view he often takes many chances and skies where he knows he shouldn't. Admittedly, he feels that it is not proper responsibility of the ski area operator in many cases when accidents happen.

DISPOSITION OF HOUSE BILL 264

Motion: Rep. Hannah made a DO PASS motion, seconded by Rep. Aafedt.

Discussion: No discussion on the motion.

Amendments, Discussion, and Votes: Rep. Addy made a motion to move the amendments (EXHIBIT 5), motion seconded by Rep. Wyatt.

Rep. Hannah offered a friendly amendment to insert "public" on page 2, line 11 of the proposed amendments. Motion CARRIED.

Rep. Brooke moved the addition of "incest" on page 3, line 11 of the proposed amendments, motion seconded by Rep. Stickney. Motion CARRIED.

Recommendation and Vote: Rep. Hannah moved DO PASS AS AMENDED, motion seconded by Rep. Addy. Motion CARRIED with a unanimous vote.

DISPOSITION OF HOUSE BILL 185

Motion: Rep. Addy moved HB 185 DO PASS, motion seconded Rep. Darko.

Amendments, Discussion, and Votes: Rep. Addy moved amendments on page 5, line 9, following "appropriate", strike public. Page 5, line 13, following "nearest", insert regional central office of the. Page 5, line 16, following "the", strike public; line 19, following "the", strike public; line 21, following "facility", insert within; following 12, strike "hours", insert hour period. Line 25, strike "facility within four hours", insert facility as soon reasonably practical. Amendments seconded by Rep. Darko.

Rep. Addy stated that the intent of the amendments is to make this bill workable for law enforcement, at the same time making sure the standard of care to the mentally ill people is not lowered.

A vote was taken on the above mentioned amendments and CARRIED unanimously.

Rep. Hannah suggested to amend page 5, line 10, Strike "anywhere in the state", motion seconded by Rep. Nelson. Amendment CARRIED with Rep.'s Wyatt, Stickney and Darko voting No.

Recommendation and Vote: Rep. Gould made a DO PASS AS AMENDED,  
motion seconded Rep. Addy. A vote was taken and CARRIED  
unanimously.

ADJOURNMENT

Adjournment At: 11:00 a.m.

  
\_\_\_\_\_  
REP. DAVE BROWN, Chairman

DB/je

3108.MIN

## DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date FEB. 6, 1989

| NAME                           | PRESENT | ABSENT | EXCUSED |
|--------------------------------|---------|--------|---------|
| REP. KELLY ADDY, VICE-CHAIRMAN | X       |        |         |
| REP. OLE AAFEDT                | X       |        |         |
| REP. WILLIAM BOHARSKI          | X       |        |         |
| REP. VIVIAN BROOKE             | X       |        |         |
| REP. FRITZ DAILY               | X       |        |         |
| REP. PAULA DARKO               | X       |        |         |
| REP. RALPH EUDAILY             | X       |        |         |
| REP. BUDD GOULD                | X       |        |         |
| REP. TOM HANNAH                | X       |        |         |
| REP. ROGER KNAPP               | X       |        |         |
| REP. MARY McDONOUGH            | X       |        |         |
| REP. JOHN MERCER               | X       |        |         |
| REP. LINDA NELSON              | X       |        |         |
| REP. JIM RICE                  | X       |        |         |
| REP. JESSICA STICKNEY          | X       |        |         |
| REP. BILL STRIZICH             | X       |        |         |
| REP. DIANA WYATT               | X       |        |         |
| REP. DAVE BROWN, CHAIRMAN      | X       |        |         |
|                                |         |        |         |
|                                |         |        |         |
|                                |         |        |         |
|                                |         |        |         |
|                                |         |        |         |



## MINUTES

### MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on March 15,  
1989, at 10:00 a.m.

#### ROLL CALL

Members Present: Chairman Bruce Crippen, V. Chairman Al  
Bishop, Senators Tom Beck, Bob Brown, John Harp, Mike  
Halligan, Loren Jenkins, Joe Mazurek, R. J. Pinsoneault  
and Bill Yellowtail

Members Excused: None

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee  
Secretary Rosemary Jacoby

Announcements/Discussion: None

#### HEARING ON HOUSE BILL 185

##### Presentation and Opening Statement by Sponsor:

Representative Timothy Whalen of Billings, District 93,  
opened the hearing on House Bill 185. He said the bill  
changed the law regarding pending commitment hearings.  
The main part of the bill appeared on page 5, he said.  
The bill would prohibit detention in jail pending a  
mental health commitment hearing. There have been  
times when a restrictive place has not been available  
other than a jail. The bill provides that regional  
facilities must be contacted on a daily basis until the  
patient is placed, he said.

##### List of Testifying Proponents and What Group they Represent:

Tom Posey, Montana Alliance for the Mentally Ill  
Chuck O'Reilly, Lewis and Clark County Sheriff,  
representing the Montana Peace Officers  
Association  
John Thorsen, Mental Health Association of Montana  
Lowry Drivdahl, Missoula Alliance for the Mentally Ill

Mary Gallagher Staff Attorney for the Board of Visitors  
in Warm Springs  
Diane Corne, Kalispell  
Laura Risdahl, Missoula Alliance for the Mentally Ill  
Dave Mosley, Kalispell  
Christy Marron, Mental Health Centers  
Mike Sherwood, Montana Trial Lawyers Association  
Winifred Storli, Kalispell  
Pat Heffernan, herself  
Evelyn Stratiff, Montana House  
Judy Erickson, Montana House

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Tom Posey said that the bill is one of compassion and compliance with existing law. The law of the state of Montana requires that a person awaiting placement in a commitment facility be held in the least restrictive environment available. Jails do not qualify, he said. The bill does not apply to somebody who has already been certified to be seriously mentally ill and in need of restriction. He said the bill would apply if a person has been picked up in need of restriction, after a petition has been filed with the county attorney and pending the commitment hearing. The bill is designed to offer the possibility that the illness is not going to be exacerbated in the person by the trauma of being held in jail. In most cases, jails do not have the facilities for holding people with mental illness, so they are placed in a solitary confinement cell, he stated. Oftentimes these cells have no bathroom facilities except for a hole in the floor; they often have lights on 24 hours a day. Many times the person is watched 24 hours a day allowing no privacy. The bill provides for transfer to a proper facility in as rapid a manner as possible. The bill possibly decreases the liability for the jail, he stated.

Chuck O'Reilly supported the bill. He agreed with the testimony previously given. He said that jails do not have the facilities or trained health professionals to deal with mentally ill persons.

John Thorsen said the bill would help establish two points: Mentally ill persons are not criminals and should not be involved in the criminal justice system and, secondly, it

should protect jails against the liability that might otherwise be present.

Lowry Drivdahl said that mental illness robs persons of making rational judgments. The sooner the treatment begins, the less time is spent in a controlled facility. He presented a letter from the Missoula County Commissioners in support of the bill. (Exhibit 1)

Mary Gallagher presented written testimony to the committee in favor of the bill (Exhibit 2). She also asked to enter into the record a letter from Susan Stefan of the Mental Health Law Project (Exhibit 3).

Diane Corne presented testimony to the committee (Exhibit 4). She said she was arrested in front of her 4-year-old son. She was placed in a cell with no privacy and urinated in her pants because she was constantly being watched.

Laura Risdahl appeared in support of the bill (Exhibit 5).

Dave Mosley supported the bill. He said putting a mentally ill person in jail was wrong. He urged passage of the bill.

Christy Marron appeared in support of the bill.

Mike Sherwood said that jails were no place for the mentally infirm. He thought an ounce of prevention would be worth a pound of cure. He entered written testimony into the record (Exhibit 6).

Winifred Storli (Exhibit 7) said she had a daughter who is severely mentally ill, as well as having a mother who is a schizophrenic. She said her daughter had spent time in the Kalispell jail. The daughter had never broken a law and shouldn't be in jail, she said.

Pat Heffernan said she had been placed in the Kalispell jail. She said it was "filthy" and "frightening." She said the deputies were all male and she had no privacy.

Evelyn Stratiff (Exhibit 8) appeared before the committee. She said she had spent time in jail as well as a transitional house.

Judy Erickson (Exhibit 9) appeared in support of the bill.

Questions From Committee Members: Senator Crippen thanked the persons who appeared before the committee and applauded their courage.

Senator Jenkins asked how many mental health facilities were in the state. Mary Gallagher said there were 5 regional centers. Kelly Morrison, Director of the Board of Visitors said there were centers in each area. There are also psychiatric hospitals in Missoula, Kalispell, Great Falls, Helena, Billings, Miles City and Butte.

Senator Jenkins asked what the present law stated. Rep. Whalen said the "illness" is moved from "individual" to the "detention" facility, so that if there is no mental health facility available, the person can be put in jail. The bill says you can't put the person in a detention facility unless there is no mental health facility available. It further required effort made in contact with mental health facilities to determine the soonest vacancy.

Senator Jenkins wondered about the "public's protection." Rep. Whalen said the emphasis was on the ill individual, but felt that he/she could be placed in jail only in cases of necessity.

Senator Beck asked what would start the process of commitment. Tom Posey said a parent, doctor or anyone might go to the county attorney for a determination that the person is a danger to himself or to others. The person can then be brought in for evaluation. The person might be put in jail at that point. If it is determined that they need treatment, yet refuse, they are held in jail until a commitment hearing. Persons have been held in jail from 1 or 2 days to 15 weeks, he said. The bill seeks to answer that situation. Another situation might occur when a vagrant is picked up, he said, and determined to need treatment.

Senator Beck asked if mental health facilities have the proper facility for violent patients. Mr. Posey said they have psychiatric wards.

Closing by Sponsor:

DISPOSITION OF HOUSE BILL 185

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Pinsoneault MOVED that House Bill 185 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

## JUDICIARY

## COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 3-15-89

| NAME                | PRESENT | ABSENT | EXCUSED |
|---------------------|---------|--------|---------|
| SENATOR CRIPPEN     | ✓       |        |         |
| SENATOR BECK        | ✓       |        |         |
| SENATOR BISHOP      | ✓       |        |         |
| SENATOR BROWN       | ✓       |        |         |
| SENATOR HALLIGAN    |         |        |         |
| SENATOR HARP        | ✓       |        |         |
| SENATOR JENKINS     | ✓       |        |         |
| SENATOR MAZUREK     | ✓       |        |         |
| SENATOR PINSONEAULT | ✓       |        |         |
| SENATOR YELLOWTAIL  |         |        |         |
|                     |         |        |         |
|                     |         |        |         |
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|                     |         |        |         |

Each day attach to minutes.

## SENATE STANDING COMMITTEE REPORT

March 15, 1989

MR. PRESIDENT:

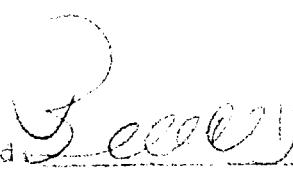
We, your committee on Judiciary, having had under consideration HB 185 (third reading copy -- Blue), respectfully report that HB 185 be concurred in.

Sponsor: Whalen (Blaylock)

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BE CONCURRED IN

Signed

  
Bruce D. Crippen, Chairmany/c.  
2/15/89  
1:58 p.m.

scrhb185.115

# MISSOULA COUNTY

BOARD OF COUNTY COMMISSIONERS

• Missoula County Courthouse • Missoula, Montana 59802  
(406) 721-5700

EXH. 1  
DATE 3-15-89  
BILL NO. HB 185

BCC-89-119  
February 22, 1989

Bruce Crippen, Chairman  
Judiciary Committee  
Montana State Senate  
Capitol Station  
Helena, MT 59624

Dear Chairman Crippen and Committee Members:

We are writing in support of HB-185, which would restrict the detention of a person in jail or other correctional facility pending a mental health commitment hearing. People who are mentally ill do not belong in jail, even temporarily. Appropriate treatment for the mentally ill during evaluation periods is not only just but has also been proven to be cost-effective.

Thank you for your consideration of these remarks.

Sincerely,

MISSOULA BOARD OF COUNTY COMMISSIONERS

*Barbara Evans*  
Barbara Evans, Chairman

*Janet Stevens*  
Janet L. Stevens, Commissioner

*Ann Mary Dussault*  
Ann Mary Dussault, Commissioner

BCC/lm

cc: Missoula Senate Delegation  
Gordon Morris, Executive Director  
MACo

OFFICE OF THE GOVERNOR  
MENTAL DISABILITIES BOARD OF VISITORS  
LEGAL SERVICES PROGRAM

SENATE JUDICIARY  
EXHIBIT NO. 2  
DATE 3-15-89  
BILL NO. HB 185



TED SCHWINDEN, GOVERNOR

P.O. BOX 177

STATE OF MONTANA

(406) 693-7035

WARM SPRINGS, MONTANA 59756

TESTIMONY ON HOUSE BILL 185  
BY MARY GALLAGHER  
BEFORE THE SENATE JUDICIARY COMMITTEE  
ON MARCH 15, 1989

Mr. Chairman, Members of the Committee, my name is Mary Gallagher and I am a staff attorney with the Mental Disabilities Board of Visitors Office at the Montana State Hospital.

I am here in support of House Bill 185 because I believe that a mental health facility, not a jail, is the more legally and therapeutically appropriate place to detain the seriously mentally ill persons who come through our system.

I am acquainted with patients at Warm Springs who have come to the Hospital after being held in a county jail, sometimes for several weeks at a time. If the person was at all psychotic, the isolation and deprivation of being locked in a jail cell for days or weeks, served only to aggravate and intensify the psychotic symptoms. When this happens, it naturally takes much longer for the person to stabilize and return to the community.

In my job, patients frequently come to my office to find out why they have been punished by being jailed when they have committed no crime. It is difficult to explain to them that jail of a mentally ill person in our State is not considered to be punishment - that it is simply what someone was calling the "least restrictive alternative" for detention. Jail, by any other name, is still punishment to them.

I urge you to support this bill and require our State to provide humane appropriate placements for the mentally ill detained in our system.



**MHLF**  
**MENTAL HEALTH**  
**LAW PROJECT**

SENATE JUDICIARY  
EXHIBIT NO. 3  
DATE 3-15-89  
BILL NO. HB 185

TESTIMONY OF SUSAN STEFAN

ON HOUSE BILL 185

Before the *Senate* Committee on the Judiciary

March 15, 1989

Mr. Chairman, Members of the Committee, my name is Susan Stefan. I am a Staff Attorney with the Mental Health Law Project, a non-profit organization which advocates for mentally ill and mentally retarded people across the country. We have been involved on the state and federal level with legislative efforts to benefit mentally disabled people for fifteen years.

The legislation before you today will benefit both mentally ill people who should not be locked in jail cells and sheriffs whose jobs are difficult enough without having to provide safety or protection for mentally ill individuals, let alone the treatment these individuals desperately need when they are in crisis. The bill before you will also save lives, because mentally ill people die in jail cells - they do all over the country, and they have in Montana. Finally, this bill cures a situation in Montana which is very likely unconstitutional.

It is important to emphasize that if a person is displaying symptoms of mental illness, he or she may need a physical exam, may need medication of a certain specific kind, may need to talk to a trained professional. These interventions are particularly crucial at the beginning of an acute episode of psychosis. It is particularly harmful for a mentally ill person to be put into a jail cell, not knowing why they are in jail, receiving no support or caring treatment, and becoming more confused and disoriented and deteriorating until they are far worse off than they were initially. Rapid treatment is very important early if a mentally ill person is in crisis. And the capacity to treat is there - there is a mental health center within two hours of any location in Montana. In many ways, holding a person in a jail cell who is acutely mentally ill is analogous to one of you having a heart attack or a stroke and being taken to jail rather than to the hospital for treatment.

2021 L Street NW, Suite 800, Washington DC 20036-4909, (202) 467-5730, FAX: (202) 223-0409

NORMAN S. ROSENBERG  
Director  
LEONARD S. RUBENSTEIN  
Legal Director

IRA A. BURNIM  
ELIZABETH K. GITLIN\*  
BONNIE MILSTEIN  
BETH PEPPER\*  
SUSAN STEFAN\*

\*Not admitted in the District of Columbia

By expecting Sheriffs to hold mentally ill people in their Jails, you are asking the sheriffs to do something beyond their job description or training. It is tragic for everyone concerned for mentally ill person to go through a crisis with no one able to provide any treatment. Mentally ill people are in so much

pain they may mutilate or even kill themselves. Sherriffs do not have the wherewithal to predict or prevent this. Yet once they have a mentally ill person in their jail, they are legally obligated to provide this care, just as they are to provide medical care to physically ill inmates.

Finally, as I said before, holding mentally ill people in jails is probably unconstitutional. The Eleventh Circuit, which includes Florida, Georgia, and Alabama, held the practice unconstitutional in 1984 in a case called Lynch v. Baxley, 744 F2d 1452 (11th Cir 1984). The Court noted that "temporary confinement in jail is particularly harmful to those who are mentally ill." It found that:

Jail exacerbates the mental problems of the people detained there and thereby lengthens the time it takes to treat them. The individuals who have been held in jail are often angry and harder to treat because they do not understand why they were detained in jail. Jail detention can lead to a greater degree of psychosis where it already exists and can possibly create such psychosis where it does not.

744 F2d at 1458.

In another case in the Second Circuit, in 1986, the Court said that it "had no quarrel" with the reasoning that "jail is for incarceration of criminals and so persons who were only awaiting involuntary commitment proceedings could not be 'punished' by being detained in jails. To so punish persons awaiting involuntary commitment did not bear any relation to the purpose of their confinement." Doe v. Gaughan 808 F.2d 871, 879 (2nd Cir. 1986). I have also been informed recently that this issue is being litigated in Mississippi.

It has been argued that in some places mental health facilities do not exist. In fact, facilities more appropriate than jails do exist for mentally ill people; many hospitals have beds available. If the person is truly violent and out of control, they should be taken at once to the state hospital, since that is where they will likely go in any event. As the court in Lynch v. Baxley held, a person must be detained in "the nearest State, regional, community, county or private hospital or mental health facility which provides quarters for mentally ill patients." 744 F2d at 1462. These options are all more appropriate than a jail cell.

Testimony of Susan Stefan  
House Bill 185  
Page 3

SENATE JOURNAL  
EXHIBIT NO. 3 153  
DATE 3/15/89  
BILL NO. HB 185

To summarize, the current practice of keeping mentally ill individuals in jails in Montana is devastating for the individual and his or her relatives; places a burden on Sheriffs which is unfair and unjustified; has led to deaths and may lead to more; and is probably unconstitutional under the United States Constitution. I urge you to correct this tragic situation by reporting this bill favorably.

Thank you.

## WITNESS STATEMENT

NAME Dianna Corne BUDGET \_\_\_\_\_ADDRESS 220 9th Ave W#3 Kalispell, MTWHOM DO YOU REPRESENT? Mentally IllSUPPORT ☒ OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

COMMENTS: I was arrested on 2  
different times for the Mental  
Health Act. I was never told  
why I was being arrested.  
I was told that I declined  
faster in jail

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

NAME Laura M. Risdahl BUDGET \_\_\_\_\_  
ADDRESS 2405 39<sup>th</sup> St, Missoula MT  
WHOM DO YOU REPRESENT? Missoula Alliance for Mentally Ill  
SUPPORT ✓ OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

COMMENTS: At the moment any person  
mind malfunctions, he or she  
needs immediate hospital care.

Putting them in jail or prison  
prolongs their illness forever  
or at least many years.

We are a Christian? nation  
& the care of our helpless  
citizens is uppermost in  
importance. They cannot  
be helped in jails.

Also These people are  
terrified at what has  
happened to them and  
putting them in jails only  
adds to their panic.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## WITNESS STATEMENT

NAME

Michael Sherwood

BUDGET

ADDRESS

MTLA

WHOM DO YOU REPRESENT?

SUPPORT

X

HB185

OPPOSE

AMEND

COMMENTS:

I support HB185. As a court appointed counsel, I saw for the first 3 years of my practice, I witnessed multiple abuses and little or no distinction between treatment of accused and convicted criminals and the mentally infirm.

This bill will cost money, but this is a clear case of "a ~~stretch~~ <sup>ounce</sup> of prevention is worth a pound of cure."

A law suit seeking both actual and exemplary damages is pending in Kalispell. Other suits are inevitable if jailing continues

I urge you to please pass this proposed legislation

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## WITNESS STATEMENT

NAME Winnifred Storli BUDGET \_\_\_\_\_ADDRESS Box 249 Kalspell Mt. 59901

WHOM DO YOU REPRESENT? \_\_\_\_\_

SUPPORT ☒ OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

COMMENTS: Parent & daughter of seriously  
mentally ill family members. Member of MHA leg. com.,  
M.H. Advisory Board, and alliance for mentally ill.  
Daughter 10 hospitalizations  
Daughter in jail, on street.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

EXHIBIT NO. 7, p. 2

DATE 3-15-89

BILL NO. HB 185

3420 Airport Rd.  
Kalispell Mt. 59901  
March 14, 1989

FLAMI (Flathead Alliance for the Mentally Ill,  
Formerly FLAME)

To the Senate Judiciary Committee

Dear Sir,

We, the families and relatives of the chronically and seriously mentally ill, join with the Sheriff's Association, MHA and AMI to ask you to pass H.B. 185, the jail bill.

In Montana and especially in the Flathead, the county jail is used as the psychiatric ward for patients awaiting commitment to a mental hospital. Their only crime being, a disease of the brain. For over a decade now this state of affairs has been protested at hearings, in the press and by concerned citizens. Our first president Mr. Frank Uhlin, a retired post master, had his wife jailed when she was in her sixties because she was very sick. In January of 1989, a young mother was picked up from a local hospital and incarcerated because she was suffering from a deep post partum depression! A book can be written about these travesties against humanity and justice.

Contrary to popular belief patients incarcerated in the "rubber rooms," are not "Sons of Sam." They are not violent, homicidal, were wolves. Generally they curl up in a fetal ball and lose control of their bodily functions, or they pace, or become agitated and sleepless or desperately try to escape from the increasing horror of their hallucinations and paranoia made much worse by sensory deprivation and T.V. monitoring.

Montana is a caring state with a small population. The present treatment of our sick is wrong. Please help to rectify this great wrong.

Members of the Flathead Allian

*Pat Jam*

P. Jam President

*Henny Jacobson*

H. Jacobson Vice President

*W. Storli*

W. Storli Legislative Committ



# Mental patients still jailed but now occupy 'soft' cell

By CHERY SABOL  
The Daily Inter Lake

With the opening of the county's new justice center, conditions for mental patients held in jail have improved — but not enough for some officials.

The new facility has a specially-designed "soft cell" to prevent occupants from hurting themselves. The cell's walls are finished with a cushioned material.

But at least one mental health professional says the whole matter of holding mental patients in jail reminds him of the Middle Ages.

The new cell is "better in the sense that it's soft-covered," said Bill Harris of the Western Montana Regional Mental Health Department.

But Harris stopped short of giving the cell his endorsement. Among his criticisms is the fact that mental health workers must "peer through the opening" to evaluate agitated persons held in the cell.

Although the new cell is equipped with a public-address system, monitoring equipment and a peephole for surveillance and for conversing through the door, it is anything but beautiful.

The walls are solid and inmates are unable to see outside the cell. Except for a grate in the floor for sanitary purposes, the cell is completely barren — no bed, no chair.

Jail detention officer Ted Stolfuss said the new cell is a vast improvement over the receiving cell in the old jail.

"There is no comparison. It's like comparing a broken-down Model T Ford and an '88 Cadillac," Stolfuss said.

In the old jail, combative or highly upset persons occupied a cell where they had no privacy and sometimes caused a disturbance.

The old cell was spiked with sharp corners, concrete walls and fixtures that a prisoner could use to injure himself. Its location allowed prisoners to interrupt booking and fingerprinting procedures of other inmates. Stolfuss said prisoners were also able to fling water and body waste through the cell bars.

But even Stolfuss sees the new soft cell as far from ideal. For mental health patients, he said, it's important to have "as close to a normal environment as this place can afford. There's nothing natural about the soft cell."

Four other medical cells in the new jail can be used for prisoners who are not likely to injure anyone. Stolfuss said those cells are "more comforting" than the soft cell and are used unless the other cell is obviously necessary.

Harris worries about the barren soft cell. He said

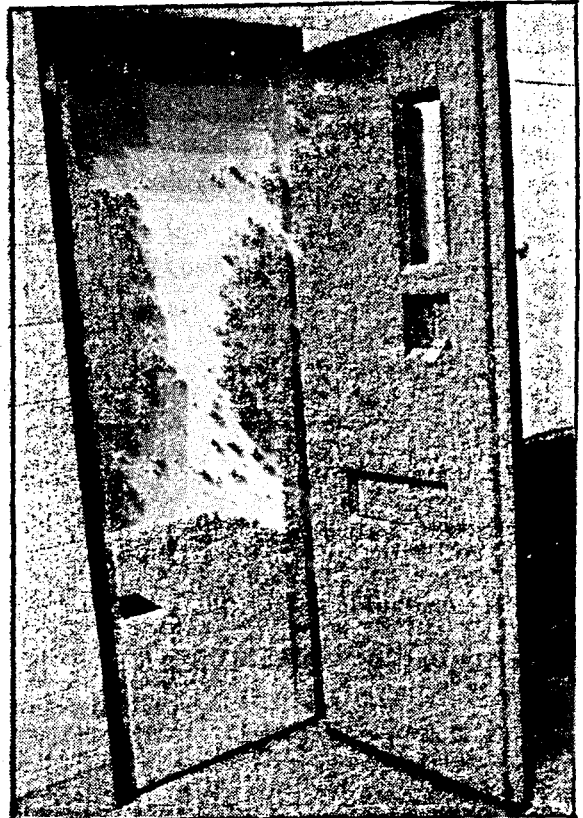


Photo By Sel Skog

NEW SOFT CELL has bleak appearance.

that a patient isn't a danger to himself or others, he is released.

If the person is judged dangerous and must stay in jail, a report is made to the county attorney's office and the matter goes to a district court hearing, where a judge decides what should be done.

In extreme cases, the patient might be transferred after evaluation to treatment centers such as St. Patrick Hospital in Missoula or the state hospital in Warm Springs.

Glacier View Hospital in Kalispell can treat mental patients, but it is a private hospital and unless a patient has insurance or can afford treatment, he may not be accepted, Harris said.

Kalispell Regional Hospital has a specially designed room for mental patients but is often unwilling to take combative persons.

Some recent cases have drawn attention to the procedures for caring for the mentally ill. In January,

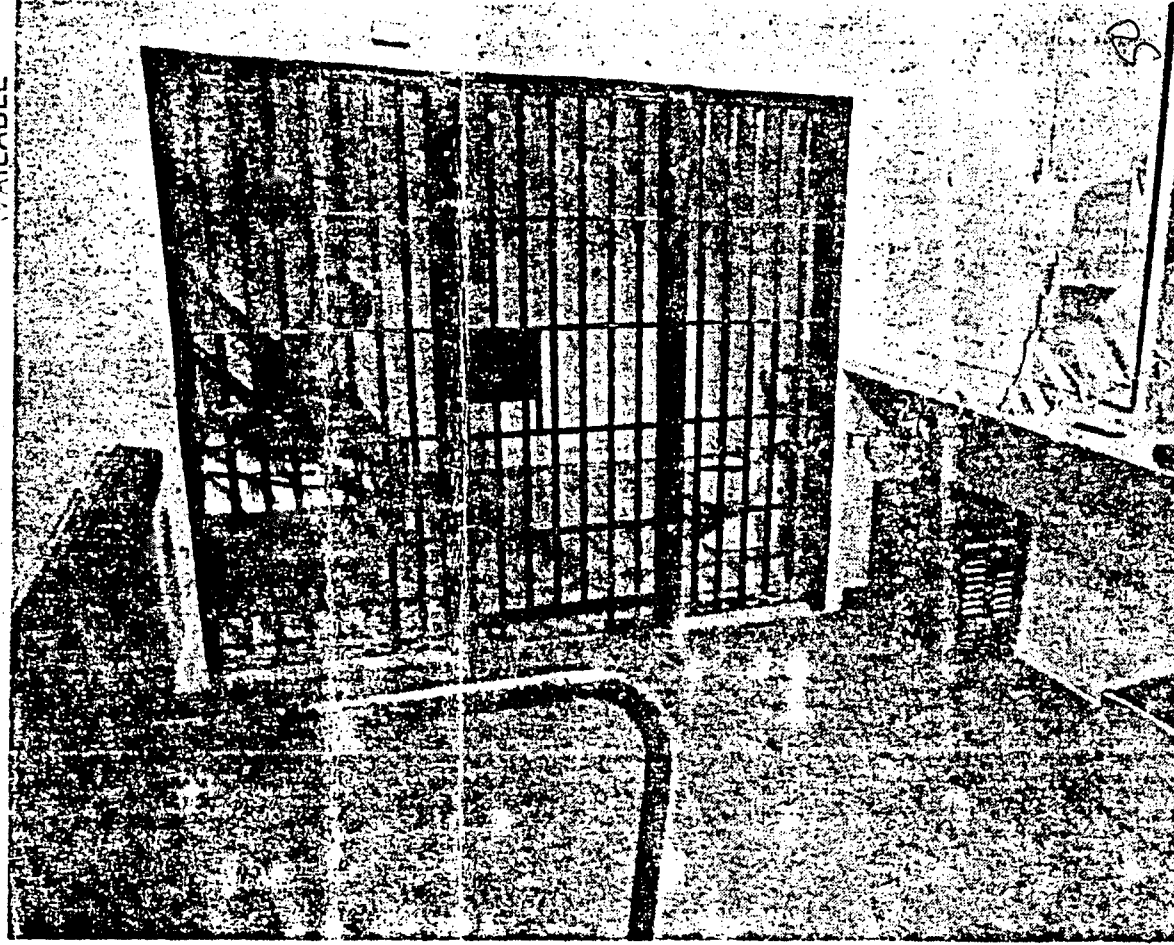
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SENATE JUDICIARY  
EXHIBIT NO 7pg4  
DATE 3-15/89  
BILL NO HB 185

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Judge Salansky says, "People just don't become aware of the problem down here until it hits home..."

## Mental Health-----A Nightmare Here

by Corky Derby

It took three policemen to bring her in. She was handcuffed, yet managed to kick, bite and gouge the men. She refused to answer even the most routine questions. It took four officers to carry her bodily to the "holding" cell at the Sheriff's office until a psychiatrist could be summoned. She stayed in the cell 10 days, and was released back on the street. The young man was picked up by two deputies. His parents had called, they could no longer handle him. He was put in the "holding" cell, his psychiatrist was notified, and came. He was there

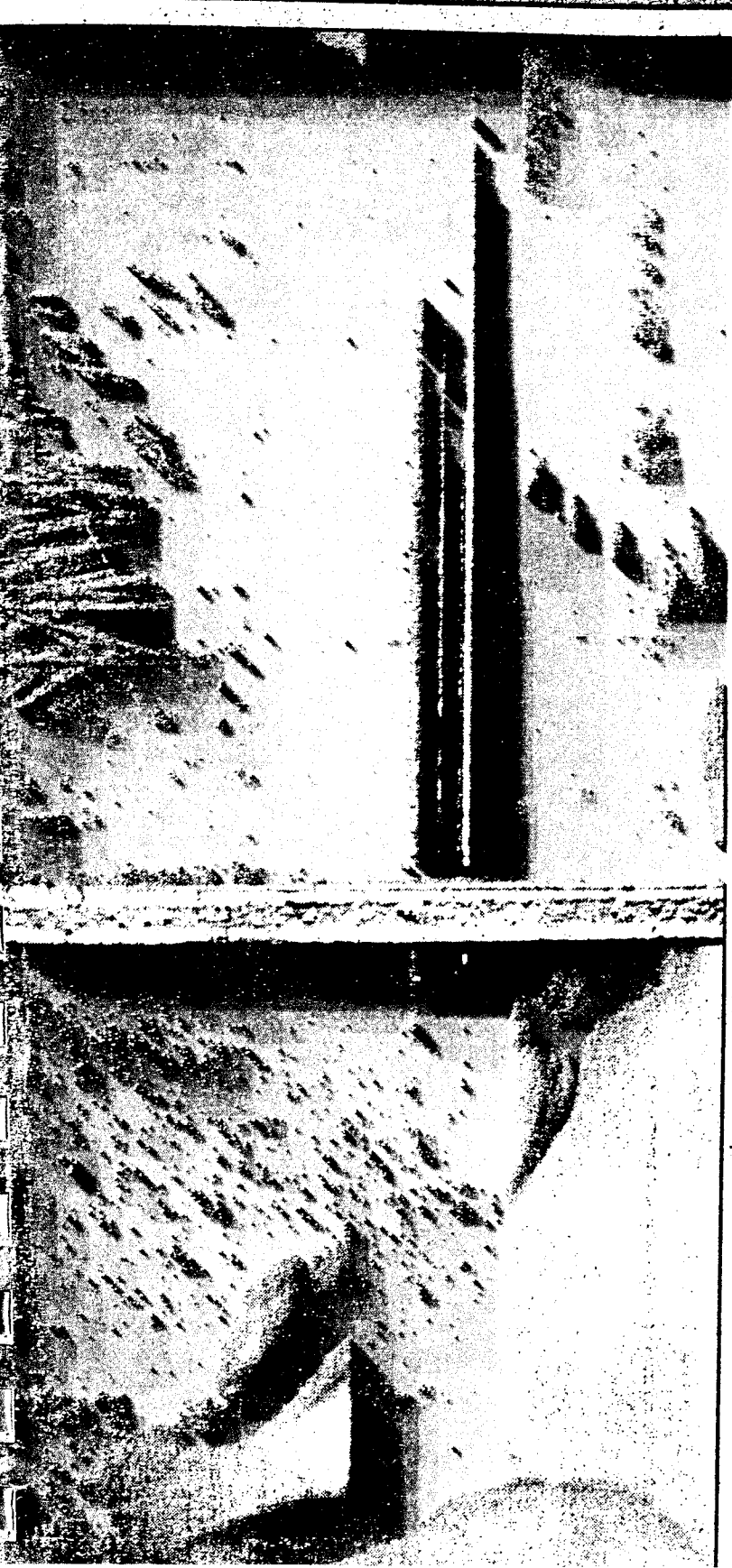
this doesn't count doctor or medication fees. Twelve patients were committed to Warm Springs at a minimum cost of \$350 per patient, or \$4,200. In addition, we pay Warm Springs \$57.61 per patient per day. It costs us \$100 per day per patient at St. Patrick's in Missoula. And these patient figures are low. The records are misleading because quite a number of patients are NOT admitted under the Mental Health Act. They are admitted on various criminal charges, such as disturbing the peace, and are not listed in the records as mental health patients. "If we're going to have to keep them, we should

This is the place they call "Warm Springs North", but it's worse than that. The tiny holding cell is located right where the greatest traffic in the jail occurs. This Editor recalls sitting here for one hour at the time when the Columbia Falls mother, who had killed her two children, was being held in this steel barred cubicle. I do not know what agonies that

woman was going through, but just suffering to me. In writing this story to one of the doctors, "What I've been hell to me." The doctor replied and as you think of it, recall that persons spends all his time in hell

valley is so inadequate as far as help for mental or alcohol problems are concerned. We find our hands are tied. What are we supposed to do with these people. We get the blame, but we didn't write the laws, we just have to enforce them." Bill Harris, psychologist and office director of the Mental Health Center also sees the problem as a continuing area of concern. The Center started in 1971 with a one-man staff and has grown to six clinical people, including a doctor, two psychologists, one psychiatric nurse, and one mental health worker. They are funded by tax monies and fees, but they are losing their federal funds December 31. As eight more staffing went has expired and

psychiatrists in the wouldn't do as disturbed." Camille Scott, Director, is fair to the community seriously disturbed ill patients. We are them. If they could be different." There are tentative psychiatric unit. could be used for evaluation of Flathead mental health nation



# Should the sick be jailed?

By ANNE CLARK

Of The Daily Inter Lake

"I live in horror that I might lose my mind in Flathead County," says Corky Derby, a member of the county sheriff's department.

Her fear has grown during the five years she has been employed at the county jail, watching mentally ill people brought in to be locked up in a barren holding tank.

It's the only place the county has for them.

The high-security cell is in a corridor, and it is understood that everyone passing is under obligation to check the occupant. Cameras are aimed at this and several other high-security cells, so the occupants can be additionally monitored from the dispatch center.

As she leads the way through the dark rabbit warren of corridors in the cell block, a judge and the jailer stop her on their way to serve papers to an inmate.

"Does she have her clothes on?" they ask.

Mrs. Derby explains that the mentally ill, particularly women, often take all their clothes off.

"The nicest women will yell the worst obscenities. When they get better, they're mortified, and feel like they can't face anyone. It's one more thing they have to cope with on their road to recovery."

A soft banging noise punctuates the subdued chatter from portable televisions set up for the inmates.

"Hear that noise? That's someone beating their head against the bars. They'll do it until they're bloody, and we can't stop them. They have the right to do that if they want to. Sometimes we can get a doctor here if they're really bad, but not often."

The mentally ill sometimes stay in jail for several days before the process to have them involuntarily committed is completed.

"We have to watch them drink from the toilet and make incredible messes. There's nobody here with any training to be able to help them," says Mrs. Derby.

Concerned relatives come to see their sick family member, and Mrs. Derby struggles to make the inmate presentable.

"I go in and wash them, try to take care of them and clean them up. I have no training. I just try to take care of them, like any Christian would," Mrs. Derby said.

They cannot be given any of the medications that are prescribed to alleviate their mental condition, because the judge must see them in their unmedicated state.

"I watch them regress, go right down, hour by hour."

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Sunday

## Hospital turns away jail patient

By JACKIE ADAMS  
Of The Daily Inter Lake  
Glacier View Hospital Wednesday refused to admit a mental patient who had been committed there by order of District Judge Michael Keedy.

Capt. Dennis Updegraff of the sheriff's department said the patient, an 18-year-old man who was thought to be suicidal, was turned away by Dr. Alan Quint and returned to jail. Updegraff and another deputy had taken the patient from the jail to the new psychiatric hospital on a court order.

Quint said today he was unable to admit the patient for several reasons, the most immediate one being that the hospital is not open and has not taken any patients yet. He said the facility is still undergoing final inspections by fire marshals.

"It may be a week or more before we can admit patients," Quint said.

He also said, "We are not sure it is legal for us to take patients who are involuntarily ordered to be here. We are looking into it. We may need some kind of special certification."

Another problem, Quint said, is security. The hospital's security arrangements, he said, are geared toward keeping unauthorized persons from entering, rather than keeping unwilling patients in.

"I hope we will be able to take committed patients," said Quint, "but each will have to be evaluated as a security risk."

Some county officials originally assumed the committed patient might have been turned away because he lacked funds. Keedy, Updegraff, and Commissioners Henry Oldenburg and Ken Krueger all expressed disappointment at the refusal to accept the patient.

Keedy and Oldenburg pointed out that the president of Heritage Health Care Corp., builder of the new hospital, had emphasized at a hearing last February that no patient would be refused for that reason.

Quint, who said he is chief of staff at the hospital but has no connection with the management, commented, "The county or state has some responsibility to pay for the services it wants."

He noted that the facility was privately built as a for-profit hospital and "if this place won't fly, it won't help anybody."

Quint said he works as a private psychiatrist in the hospital and "any patients I admit are my private patients, for a fee."

"This was not my patient. Nobody ever consulted me. He just arrived."

Bob Allison, attorney for the mental patient, said he had agreed

## Opinion— Find substitute for jailing mentally ill

Flathead County officials had hoped that the arrival of Glacier View Psychiatric Hospital would mean an end to locking up mental health patients in the county's woefully inadequate jail.

For years, the only place for persons cited under the mental health act, pending commitment to Warm Springs, has been the county jail. The jail has no proper facility. The incarceration is dehumanizing for the patient, painful for the family, and demoralizing for the jailer.

So when Heritage Health Care Corp. asked the state a year ago for a permit to build Glacier View, the jail administrator was among those supporting the proposal.

Included in the minutes of the hearing before the advisory Health Systems Agency, there are statements from Michael Cancelosi, Heritage's president. Cancelosi told the board that Glacier View would not deny access to the facility to any member of the community, regardless of ability to pay. At the same hearing, he said his firm would make arrangements with the county regarding who is going to pay for indigent or transient patients.

Taken together, the two statements seem to contradict each other. Nevertheless, from the attitude expressed at the hearing, the county believed it would have an alternative to locking up mental health patients in the old jail. It also seemed that Glacier View might be

an alternative to Warm Springs — "regardless of ability to pay."

But that evidently is not to be. One mental patient, committed to Glacier View, was turned away last week, at least partly because he was unable to pay. At a court hearing for another mental patient, a representative of Glacier View questioned that patient's ability to pay.

Now, you can't fault Glacier View for expecting to be paid for services rendered. Without income, the hospital would be quickly closed and could treat no one.

Yet, it seems there should be some accountability for the promises made at the application hearing. Will hospital policy now exclude all indigent patients? A minimum expectation would be some discussion with the county, as promised, regarding payment.

It's unreasonable to expect Glacier View to fill its beds with non-paying patients. It's just as unreasonable to expect the county to pick up the full \$195-per-day tab — even if it had the money. There must be some acceptable middle ground, but so far, although a year has passed since the hearing, the hospital hasn't spoken to the commissioners about payment.

It will be difficult to reach a fair and affordable agreement. But there must be at least an attempt to reconcile the performance with the promise.



# Families of the mentally ill search for solu

By ANNE CLARK

Of The Daily Inter Lake

They are hurt, ashamed and exhausted. They would like to come out of the closet and find community support, but they have only just found the courage to search out one another. They are the families of the mentally ill.

In agony, they watch a loved family member behave "like a lunatic" (some sadly use the term) and are unable to stop them or help them. They cast about for help, tracking down every avenue of treatment, but ultimately come to a dead end — Montana's commitment law.

In Montana, a person cannot be committed to a mental institution against his will unless he is clearly a danger to himself or to the public.

Meanwhile, the family name becomes well known at the police department as the ill person takes to the street to direct traffic or has late-night shouting matches with the "voices" in his head.

He can be treated, but not against his will. And, agitated and suspicious of everybody, he's not likely to give his consent to anything.

The families exhaust themselves emotionally and financially caring for him, often putting aside the needs of other family members.

"You do everything you know how to do for them," one mother said.

The family becomes increasingly isolated from the community and friends, who have the age-old fear of the mentally ill.

It's enough to make someone sick — and it does.

Family members begin suffering reactive

"It's a loved member of the family who is raising all kinds of hell" says one mother, who by state law is unable to have her child treated.

depression as they struggle to cope with an impossible situation, and many families seek professional help for themselves.

Locally, some have gathered in a mutual help organization, calling themselves Families Lovingly Allied for Mental Education.

"I can't help my child," one mother said. "I do this for myself."

Resigned to their inability to provide immediate help for their sick family member, several individuals in the organization are trying to effect some changes for their benefit.

They have targeted two areas which they feel cry out for change.

First, they are trying to get the mentally ill housed in some place other than the county jail while they await a hearing. Second, they're trying to get the state's commitment laws changed.

The families feel that getting the sick out of the county jail would help them in several respects.

"When you put people in cages, the chance of them agreeing to treatment is nil," one mother said.

Because she also wants the public to understand that the mentally ill are sick, she

dislikes the use of a jail.

"Society understands that we don't put people with an illness or a tumor in jail, so people reason that if a person is put in jail, it must be because he is a criminal," she said.

"People need to understand, these people didn't bend an elbow (drink to excess) to get the way they are. I would like to see us treat them as well as we do the mentally retarded in our community."

"It's a loved member of a family who is raising all kinds of hell. It's absolutely exhausting. And on top of that, I'm trying to put my energy into educating the community and getting legislation."

Because of a national spirit of concern for civil liberties, in the last 20 years it has become impossible to treat many cases of mental illness. Unless a person is a clear danger to himself or the public, he cannot be treated against his will.

Families are left playing a waiting game — waiting for the extreme behavior that will bring law enforcement personnel into the act.

They would like to see the laws amended so help can come sooner, as in Washington State,

where a recent change allows help for some deterioration in routine receiving such care as health or safety.

"In the 'bad old days' my father was able to go against her will. She was completely functional."

She doesn't deny it were done in the past.

reason some people demand amending the commitment law.

"We have more knowledge, but less chance who need it, because we take them."

"Unless he ends up sleeping bag for a week. After he has damage then he can be forcibly treated."

She and other mothers try to get the new psychiatric help even though they want to help their families.

"We spent \$22,000 last year alone," she said, and insurance covering local hospital rising to help her child.

"It's appalling. A hospital with all types. It can't treat one of them. We need a place where observed and medicated see their symptoms."

BEST COPY  
AVAILABLE

BEST COPY  
AVAILABLE

JAIL DEPLORABLE

I had often heard of the deplorable conditions of the county jail. But I was totally unprepared for, and was thoroughly shocked and angered by what I saw on a recent visit to a female mental patient being held pending a hearing. Absolutely no privacy; a toilet that wasn't working; no reasonable lavatory facility; and a hard, barren cot that can be best described as a torture rack, especially for an older patient.

Perhaps for someone locked up for a criminal act this can be considered part of the punishment. But since when have we reverted to the Dark Ages in punishing mental patients? They need our help and sympathy, not humiliating degradation and torture.

I cannot understand why Flathead County hasn't long since made some arrangement with the hospital for a security room where the patient would have the dignity of some privacy, a place to wash up, and a reasonable comfortable bed. Or why not use one of the many rooms at Courthouse East (the old hospital)? Certainly that would pose no great problem or expense.

--Frank Uhler  
Box 157  
Martin City

1st President of FLAME Group  
in the Flathead.

SENATE JUDICIARY

EXHIBIT NO. 7 pg 8

DATE 3/15/89

BILL NO. HB 185

FLAME

(LOCAL AFFILIATE OF NAMI)

NATIONAL ALLIANCE FOR  
MENTAL ILLNESS

WRITE OR CALL

117 Rogers Road Columbia Falls  
59912

Box 249 Kalispell 59901

Phone  
892-3004

752-2440

257-1361

257-1451

TO WHOM IT MAY CONCERN:

MENTAL ILLNESS does that label make you uneasy? Are you confused as to what the term means? Could embarrassment or pride be allowing you to hide this disability? Care to know more so the fear will subside? Care to take action so that the lot of patient and family can be alleviated?

At last a family and patient support group located in the Flathead Valley for those of us afflicted with mental illness.

We are organizing now and have felt the need to contact other families suffering with similar problems.

A movement is springing up all over the country at the grass roots. Here in Kalispell we call ourselves FLAME (Families Lovingly Allied For Mental Education). We meet the 1st Tuesday of the month at 7 P.M. at the Lamplighter House, No. 146, 3rd St. West, Kalispell. Please come to our meeting or feel free to call the number listed below for information or support in troubled times.

We of FLAME feel that by ignoring this disability harm is inflicted not just on the mentally ill themselves, but also on those who are involved and care about them. Education, cooperation and support could alleviate much suffering. We belong to a National Group the National Alliance for Mental Illness. There is a light at the end of the tunnel, a "flame" in the darkness.

Our main goal in the Flathead is to get mentally ill people who are involuntarily committed while waiting for a hearing, out of the County Jail.

Because of the confidentiality law and the desire for anonymity we ask you to write or call us to end isolation. We can talk about our shared misfortune. We care and share. We are just beginning. We need each other.

BEST COPY  
AVAILABLE

BEST COPY  
AVAILABLE

Now is the perfect opportunity  
.... join us.

Sincerely,  
FLAME

(Affiliate of NAMI)

Write or Call  
117 Rogers Road Columbia Falls  
59912  
Box 249 Kalispell 59903-0249  
or  
59901

Phone

892-3004  
752-2440  
257-1361  
257-1451

## WITNESS STATEMENT

NAME Evelyn Stratiff BUDGET \_\_\_\_\_ADDRESS 24 South EwingWHOM DO YOU REPRESENT? Montana HouseSUPPORT House <sup>bill</sup> 185 OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

COMMENTS: I feel we need this bill-185 to keep  
Mentally ill people out of prison. they don't  
belong there. There are lot of <sup>other</sup> places to put  
them.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



## WITNESS STATEMENT

NAME Judy Erickson BUDGET \_\_\_\_\_ADDRESS 422 North Last Chance GulchWHOM DO YOU REPRESENT? Montana HouseSUPPORT ☒ OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

COMMENTS: Please help our Mentally Ill  
out of Jail. I don't think it's right to  
put them in prison because of their  
emotional & mentally ill commitments.

That's what Hospitals are for.

I'm an epileptic & having emotional  
and other mental disabilities. If I was put  
under solitary confinement or in a cell, my  
emotions and seizures would occur.

Please find a place for our  
mentally ill and handicapped people instead  
of a jail cell, where more mental illness would  
end up taking affect

Thank - You

Judy L. Erickson  
3/15/89

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## 1 HOUSE BILL NO. 185

2 INTRODUCED BY WHALEN, BLAYLOCK, GOULD

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT RESTRICTING THE  
5 DETENTION OF A PERSON IN A JAIL OR OTHER CORRECTIONAL  
6 FACILITY PENDING A MENTAL HEALTH COMMITMENT HEARING;  
7 REQUIRING PUBLIC MENTAL HEALTH FACILITIES TO IDENTIFY  
8 APPROPRIATE MENTAL HEALTH PLACEMENTS FOR A PERSON DETAINED  
9 IN A JAIL OR OTHER CORRECTIONAL FACILITY; REQUIRING RAPID  
10 TRANSFER TO AN APPROPRIATE PLACEMENT; AND AMENDING SECTIONS  
11 53-21-120 AND 53-21-124, MCA."

12  
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 53-21-120, MCA, is amended to read:

15 "53-21-120. (Temporary) Detention to be in least  
16 restrictive environment -- preference for mental health  
17 facility -- court relief -- prehearing detention of mentally  
18 ill person prohibited. (1) A person detained pursuant to  
19 this part shall be detained in the least restrictive  
20 environment required to protect the life and physical safety  
21 of the person detained or members of the public; in this  
22 respect, prevention of significant injury to property may be  
23 considered.

24 (2) Whenever possible, a person detained pursuant to  
25 this part shall be detained in a mental health facility and

1 in the county of residence. If the person detained demands  
2 a jury trial and trial cannot be held within 7 days, the  
3 individual may be sent to the state hospital until time of  
4 trial if arrangements can be made to return him to trial.  
5 Such trial must be held within 30 days. The county of  
6 residence shall pay the cost of travel and professional  
7 services associated with the trial. No person may be  
8 detained in any hospital or other medical facility which is  
9 not a mental health facility unless such hospital or  
10 facility has agreed in writing to admit the person.

11 (3) A Except as provided in 53-21-124, a person may  
12 not be detained pursuant to this part in a jail or other  
13 correctional facility only-if-no-mental-health-facility-is  
14 available-or-if-the-available-mental-health--facilities--are  
15 inadequate-to-protect-the-person-detained-and-the-public--As  
16 soon--as--a--mental-health-facility-becomes-available-or-the  
17 situation-has-changed-sufficiently-that-an-available--mental  
18 health-facility-is-adequate-for-the-protection-of-the-person  
19 detained--and--the-public, then the detained person shall be  
20 transferred from the jail or correctional--facility--to--the  
21 mental-health-facility.

22 (4) A person detained prior to involuntary commitment  
23 may apply to the court for immediate relief with respect to  
24 the need for detention or the adequacy of the facility being  
25 utilized to detain.

(5) No detention may be ordered under this part for a person concerning whom a petition has been filed under 53-21-121(1)(b).

(6) No person may be involuntarily committed to a mental health facility or detained for evaluation and treatment because he is an epileptic, mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes him to be seriously mentally ill within the meaning of this part. (Terminates July 1, 1989--sec. 18, Ch. 376, L. 1987.)

53-21-120. (Effective July 1, 1989) Detention to be in least restrictive environment -- preference for mental health facility -- court relief. (1) A person detained pursuant to this part shall be detained in the least restrictive environment required to protect the life and physical safety of the person detained or members of the public; in this respect, prevention of significant injury to property may be considered.

(2) Whenever possible, a person detained pursuant to this part shall be detained in a mental health facility and in the county of residence. If the person detained demands a jury trial and trial cannot be held within 7 days, the individual may be sent to the state hospital until time of trial if arrangements can be made to return him to trial. Such trial must be held within 30 days. The county of

residence shall pay the cost of travel and professional services associated with the trial. No person may be detained in any hospital or other medical facility which is not a mental health facility unless such hospital or facility has agreed in writing to admit the person.

(3) A Except as provided in 53-21-124, a person may not be detained pursuant to this part in a jail or other correctional facility only if no mental health facility is available or if the available mental health facilities are inadequate to protect the person detained and the public. As soon as a mental health facility becomes available or the situation has changed sufficiently that an available mental health facility is adequate for the protection of the person detained and the public, then the detained person shall be transferred from the jail or correctional facility to the mental health facility.

(4) A person detained prior to involuntary commitment may apply to the court for immediate relief with respect to the need for detention or the adequacy of the facility being utilized to detain."

**Section 2.** Section 53-21-124, MCA, is amended to read:

"53-21-124. Detention of respondent pending hearing or trial. (1) The court may not order detention of respondent pending the hearing unless requested by the county attorney and upon the existence of probable cause for detention.

1 Counsel shall be orally notified immediately. Counsel for  
2 the respondent may then request a detention hearing, which  
3 shall be held forthwith.

4 (2) In the event of detention, the respondent shall be  
5 detained in the least restrictive setting necessary to  
6 assure his presence and assure his safety and the safety of  
7 others as provided in 53-21-120. He A respondent may be  
8 detained in a jail or other correctional facility only if no  
9 appropriate public mental health facility is immediately  
10 available for placement anywhere--in--the--state. When the  
11 respondent is detained in a jail or other correctional  
12 facility, the jail or other facility shall immediately  
13 notify the REGIONAL CENTRAL OFFICE OF THE nearest public  
14 mental health facility, as defined in 53-21-201, that a  
15 person detained in the jail or correctional facility is in  
16 need of an appropriate placement. Upon notification, the  
17 public mental health facility shall identify an appropriate  
18 placement for the respondent, in accordance with the  
19 requirements of 53-21-120. Until a placement is identified,  
20 the public mental health facility shall report on the status  
21 of the placement to the jail or correctional facility WITHIN  
22 every 12--hours 12-HOUR PERIOD, including weekends and  
23 holidays. When an appropriate placement has been identified,  
24 the court must be promptly notified and the respondent must  
25 be transferred to that facility within-4-hours AS SOON AS

1 REASONABLY PRACTICAL.

2 (3) If the respondent is detained, he shall have the  
3 right to be examined additionally by a professional person  
4 of his choice. Unless objection is made by counsel for the  
5 respondent, he shall continue to be evaluated and treated by  
6 the professional person pending the hearing."

-End-

10